

## **M.P. Civil Court Rules, 1961**

MADHYA PRADESH

India

## **M.P. Civil Court Rules, 1961**

### **Rule M-P-CIVIL-COURT-RULES-1961 of 1961**

- Published on 13 April 1961
- Commenced on 13 April 1961
- [This is the version of this document from 13 April 1961.]
- [Note: The original publication document is not available and this content could not be verified.]

M.P. Civil Court Rules, 1961 In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of the Madhya Pradesh Civil Courts Act, 1958, and all other powers enabling, and in supersession of the existing rules in force in Civil Courts in any part of the Madhya Pradesh, the following rules relating to Court-hours, Cause Lists, Pleadings, Petitions, Presentation, Registration etc., and Explanation of Plaints have, with the previous approval of the Governor, been made by the High Court of Madhya Pradesh, Jabalpur, and are published for general information.

**2. These rules shall come into force on the 19th June, 1961.**

## **Part I – Rules Relating To The Civil Procedure Code**

### **Chapter I**

### **Court-Hours, Cause Lists, Pleadings, Petitions, Etc.**

#### **1. General**

##### **1.**

(1) The ordinary hours of sitting, for all Courts shall be 11 a.m. to 5 p.m. (2) There shall ordinarily be an interval (not exceeding half an hour) at about 2 p.m.

##### **2.**

(a) The judicial work of the day shall be taken up punctually at 11 a.m. and shall have precedence over all other work. In no circumstances are presiding Judges to permit their administrative or departmental work to interfere with the strict observance of this rule. (b) Administrative or

departmental work shall be done either before the sitting or after the rising hour or after the disposal of the day's judicial work should it occur earlier. On days when the administrative work to be done heavy presiding Judges may rise half an hour earlier for the purpose.

### 3.

Ordinarily no case should be taken up on a holiday without the consent of both parties where parties alone are concerned and without the consent of witnesses in attendance who are proposed by the parties to be examined on such a holiday. Summons for first hearing should never be for a holiday.

### 4.

If Court work is commenced punctually at 11 a.m., it will seldom be necessary to continue the hearing of case after 5 p.m. When the examination of a witness is proceeding at 5 p.m. the Court should decide whether his examination should continue or be postponed till next day. Ordinarily, the examination of a fresh witness should not be begun after 5 p.m., but this may be done when it tends to the greater convenience of parties and witnesses in attendance or when the Court considers that the ends of justice will be served thereby. Addresses of legal practitioners should not be heard after 5 p.m. unless they desire it. In deciding what cases should have precedence in the day's proceedings, the advisability of given precedence to cases in which parties and witnesses come from a distance should be taken into consideration.

### 5.

(1) The working hours in every judicial office shall be from [10.30 a.m. to 5 p.m.] [Amended vide Corrigendum vide Notification No. 3473-III-1-5-57, dated 13-4-61, published in M.P. Gazette, Part IV (Ga) dated 28-4-1961 at page 266.](2) It is the duty of every Judge to insist on the punctual attendance of all members of the establishment at the hour prescribed by this rule, on the entry in the attendance register of the hour of arrival of each member, and on the prompt and regular despatch of all official business. Note 1. - Permission should be given for one hour on Fridays to such Muhammadan officials as ask for it to say their Juma prayers on the clear understanding that they would work an extra hour to make up for this time. [Government of Madhya Pradesh General Administration Department Memo No. 1650-CR-1703/1 (R), dated the 8th March, 1958]. Note 2. - (a) At the headquarters of a civil district, the Clerk of Court and at outlying stations, the Reader to the senior Judge is generally responsible for seeing that ministerial officers attend punctually at the prescribed hour, and that they commence work promptly and do not leave before the hour fixed, or, if their work is not up-to-date, until they receive permission to leave. The attendance register should be submitted punctually at 11.10 a.m. to the Clerk of Court or Reader, as the case may be, who should mark in red ink any official's late attendance. The register shall then be laid every day before the senior Additional District Judge at Headquarters or the senior Judge at an outstation for his signature. (b) The register shall be destroyed after one year from the date of last entry therein.

**6.**

The following instructions shall be followed in making entries in the judicial diary prescribed under Rule 415 : (1) Each case fixed for any day shall be entered in advance immediately upon a date or adjourned date being fixed, such entry showing the purpose for which it is set down on each date. The cases should be classified in such a manner as to show at a glance the nature of work fixed for the particular day. The classification might be- A. Suits (i) For final disposal at first hearing. (ii) For ex-parte evidence. (iii) For evidence after issues. (iv) For settlement of issues. (v) For delivery of judgement. B. Executions (i) Ordinary. (ii) Objections. C. Miscellaneous (i) For first hearing. (ii) For evidence. (2) The progress made in each case during the day shall, immediately the hearing concludes, be briefly noted in the third column by the Judge or by the Court Reader as may be found convenient. The hours between which evidence was recorded and the number of witnesses examined should be noted in the second and third columns, respectively, against each case. (3) On no account should any page of the diary be torn or any entry erased. Necessary corrections should be made in red ink. (4) The diary shall be placed on the Judge's table as soon as the Court opens. The Judges shall, with his own hand, enter the time of sitting and rising and shall also record a brief note of explanation for late sitting or early rising. The diary shall be signed by the Judge every day after careful scrutiny when the entries therein are complete. (5) When full, the diary shall be retained in Court and destroyed after two years from the date of the last entry therein.

**7.**

(1) Each case must be entered in the cause list prescribed under Rule 415 as soon as a date is fixed for hearing. The cause list must show the date for which the case has been fixed and for what purpose. A separate cause list should be maintained for execution proceedings. (2) The cause list must be written in the language of the Court and shall be fastened on a board, kept, during office hours, in a conspicuous place, either within or without the Court-room accessible to the general public so that all parties and their counsels may be able to see at a glance what cases are fixed for each day and for what purpose. (3) There should be a separate list for every month. The paper should be ruled for the whole month. Sundays and gazetted holidays being noted and sufficient blank space being left for each working day for which no cases or a small number of cases have been fixed. Whenever a case is fixed for hearing, it will be inserted against the proper date. As each case is called and heard the entry relating to it will be scored out. The Reader of the Court will be held responsible that this is regularly done. (4) In column 6 it must invariably be noted what was done in the case on the day appointed, so that every case may be traceable in the list from the first date fixed for hearing until the date of disposal. The result of the cases disposed of should also be clearly noted in that column. (5) Completed cause lists should be preserved in Court for reference so that any inspecting officer may be able to see at a glance how the work was disposed of. (6) The list shall be destroyed after one year from the date of the last entry therein.

**8.**

(a) Hindi written in Devnagri script shall be the language of the Civil Courts, subject to such exemptions as may be notified by the State Government from time to time. (Attention is drawn to

Education Department Notification No. 2309-XX-CC dated the 31st July, 1958, in which the following, among other exemptions, have been mentioned as regards Civil Court-(i)recording depositions of expert witnesses;(ii)judgements and orders in all Civil Courts;(iii)matters falling under sub-section (3) of Section 137 of the Code of Civil Procedure, 1908].(b)With the permission of the presiding Judge any advocate or pleader may address the Court in English, when the opposite party is represented by a counsel or is acquainted with that language and consents to this being done.

## **9.**

For sealing writs, decrees, processes, sale certificates, certificates of non-satisfaction of decrees and copies, etc., the regular seal of the Court shall be used by all judicial officers.[For description of seal, see Law Department Notification No. 8/7375-XXI-B, dated the 1st January, 1959, issued under Section 22 of the Madhya Pradesh Civil Courts Act, 1958 (Act III of 1958) read with High Court Memorandum No. 8890, dated the 25th July, 1959].

## **9A.**

In exercise of the powers conferred by sub-rule (4) of Rule 4 of Order III, First Schedule, to the Code of Civil Procedure, the High Court is pleased to direct that an advocate or pleader shall not accept a document of his appointment as such from a person who is unable to write his name, unless it is attested by a literate person in the following form : "I, A.B. hereby attest the mark of C.D., who is known to me and who affixed this mark in my presence, declaring that he thereby appointed E.F. advocate/pleader, to act for him in the above named case.Date.....Signature....."If the person is unable to have the document so attested it may be accepted in Court in the presence of the presiding Judge who should endorse thereon that the document was accepted in his presence.

## **9B.**

The use of rubber stamps in judicial orders for signatures required to be made by any law or rules is forbidden

## **2. Pleadings, Petitions and Affidavits**

A. - Pleadings, Petitions, Etc.

## **10.**

All pleadings, memoranda of appeal, petitions, affidavits, applications and papers of a similar nature to be presented to a Court shall(i)written, type-written, or printed fairly and legibly on white foolscap size paper of reasonable quality. One side of the paper only shall be used, leaving a quarter margin on the left and at least one and a half inches of open space at the top and bottom of each sheet;Note - Pleadings and other papers which do not conform with the above rule should be

returned for rewriting.(ii)verified strictly in the manner required by Order VI, Rule 15, Civil Procedure Code, where verification is required;(iii)couched in proper language and in conformity with rules and in the forms prescribed, if any;(iv)dated and signed by the person presenting and also, where necessary, by such other person as may by law be required to sign them;(v)signed by the scribe or typist who shall state the capacity in which he writes or types them. If he is a licensed petition writer he shall affix his seal and also state the serial number which they bear in his register.

## 11.

The registered address required to be filed under Rules 19 and 20 of Order VII and Rule 11 of Order VIII, shall contain the following particulars:(i)the name of the street, lane or municipal ward and the number of the house, if any;(ii)the name of the town or village;(iii)the post office; and(iv)the tahsil and the district.Note 1. - The address shall be within the local limits of the Civil District in which the suit or petition is filed, or if an address within the limits of such Civil District cannot conveniently be given, within the local limits of the Civil District in which the party ordinarily resides.Note 2. - It is open to the Court to dispense with the filing of a registered address in cases decided on admission of claim or when the defendant makes no defence. When a defence is made and the defendant is poor and ignorant the Court shall exercise its discretion in deciding whether or not the defence should be struck out. These instructions, however should not be construed as permitting laxity in the enforcement of the useful provisions of the rules requiring the filing of registered addresses.

## 12.

It should be clear in every plaint or memorandum of appeal how the valuation has been calculated. Where this is not so or where it appears to the officer receiving and examining the plaint or memorandum of appeal that there is manifest under-valuation, the plaint or memorandum of appeal shall be placed before the presiding Judge for order, The subject is further dealt with in Appendix II to Part V.

## 13.

(1)Every petition shall state concisely and clearly(a)the facts, matters and circumstances upon which the applicant relies;(b)the matter of complaint, if any, and the relief sought or the prayer made;but not arguments or any irrelevant matter.Note. - (1) Petitions containing argumentative matter (e.g., quotations and discussions of the effect of certain sections of Acts, or of certain ruling of the High Courts, etc.) or statements which are irrelevant to the matter in hand should be returned to applicants without any order except an endorsement that the application is returned.(2)Separate petitions shall be made in regard to district subject-matters(3)A petition must not contain more than one prayer or one series of alternative prayers of the same kind.Illustration. - Application may be made by one petition for warrant of arrest against a recusant witness or for a proclamation for his appearance or for a notice to show cause against fine or non-appearance, but not in that petition for local investigation, or a commission to examine a witness, or amendment of plaint.(4)Every interlocutory application or petition filed in a suit or proceeding valued at Rs. 50 or less shall clearly state the fact that it is so valued in order to enable proper check to be made of the Court fee

paid.(5)Every interlocutory application or petition, other than one which under Rule 418 is to be registered as Miscellaneous Judicial Case, shall be given by the Reader a serial number in the chronological order of its presentation in the suit or proceedings. This number shall be entered in red ink at the head of the application or petition as follows : The first interlocutory application or petition in the particular suit or proceedings will be endorsed "Interlocutory Application (or Petition) No. 1, the second "Interlocutory Application (or Petition) No. 2", and so on. The number so given shall also be entered by the Reader in the margin of the order-sheet against the entry relating to the presentation of such application or petition.

#### **14.**

(1)Every interlineation, erasure or correction in a petition or pleading shall be initiated by the party or recognised agent or pleader presenting it, and by the officer of the Court to whom it is presented. In the case of an affidavit, such authentication shall be made by the initials of the officer administering the oath. Numbers should be expressed in figures, and when Indian dates are given in any pleading, petition, affidavit, etc., they should be followed by the corresponding English dates and dates according to National Calendar.Note. - The initialling by the officer should ordinarily be done at the time of presentation. But if this is not possible on account of heavy filing of plaints on a particular day, the initialling should be done at any time before registration.(2)When a figure is to be corrected it shall be cancelled by drawing a pen across it in such a manner that it may remain distinctly legible, the substituted figure shall be written above, below, or by the side of the cancelled figure, and the alteration shall be attested by the initials of the person making it. The practice of erasing, obliterating and changing into other figures, the figures to be corrected, is strictly prohibited.

#### **15.**

(1)In every pleading, petition etc., names of parties should bear consecutive numbers and a separate line should be allotted to the name and description of each person.(2)These numbers should not be changed, and in the event of death of a party during pendency of the suit or proceeding his heirs or representatives, if more than one, should be shown by sub-numbers. Where fresh parties are brought in, they are to be numbered consecutively to the plaintiffs or defendants, as the case may be, already in the suit. Where any party whose name is entered in the register of suits dies or fresh parties are added, the necessary correction should be made in the register forthwith.Note. - When heirs or representatives of deceased parties are brought on record by an appellate Court during the pendency of an appeal or by the original Court after the decree has been transferred for execution to another Court, the appellate or original Court, as the case may be, shall instruct the trial Court to which the decree has been transferred to make the necessary changes in the Civil Suit Register or the Register of Decrees, as the case may be.

#### **16.**

The Court should satisfy itself as to the identity of every person presenting a pleading, affidavit or petition.

**17.**

In contested original suits, no written statement, list of documents, or application which the Judge may consider material shall be filed, unless copies thereof have been previously served on the pleader for each set of parties whose interests are not joint. Pleader served with such copies shall give a receipt on the original written statement, list or application. The Copies shall be authenticated by the signatures of the pleaders of the parties on each page on the bottom left hand margin.

**18.**

A call for urgent applications shall be made by Courts administering affidavits at 11 a.m. and 2.00 p.m. along with the call for affidavits, and by the other Courts at 2 p.m. Petitions should always be taken in open Court, and usually at the commencement of the daily sitting of the Court. The majority of petitions can be disposed of by an order passed in Courts as soon as they are necessary before an order can be made, petitions should, unless they are of an exceptionally urgent nature, be brought up with such record or papers on the following working day and orders should then be passed in Court.

**19.**

No document or proceeding which requires to be presented to or filed in Court shall be acted upon by the Court where there is a reference to the record or to other papers if it is sent by post or telegraph. The Court, however, has discretion to accept, if sent by a post, a document not required to be so filed in or presented to the Court.

**20.**

All Courts dealing with affidavits should make calls for affidavits at 11 a.m. and 2 p.m. every day. If the Clerk of Court or other ministerial officer is appointed a Commissioner for administering oath of affidavits, he will discharge that function at such time as may be fixed by the District Judge in this behalf.

**21.**

(1) Every affidavit to be used in a Court of Justice shall be entitled "In the Court of....." naming such Court. (2) If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it must also be entitled in the cause. (3) If there be no cause in Court, the affidavit shall be entitled "In the matter of the petition of.....".

**22.**

Every affidavit shall be drawn up in the first person and divided into paragraphs, numbered consecutively, and each paragraph as nearly as may be, shall be confined to a distinct portion of the

subject.

**23.**

Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit shall be described in such manner as shall serve to identify him clearly; and where necessary, for this purpose, the affidavit shall contain his full name, age, father's name, profession or trade and true place of residence, and shall be subscribed either with his signature in his own hand or his finger impression.

**24.**

Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the fact deposed to. Two or more persons may join in any affidavit, each shall depose separately to facts which are within his knowledge, and such facts shall be stated in separate paragraphs.

**25.**

When the declarant in any affidavit speaks to any fact within his 'own knowledge, he must do so directly and positively, using the words "I affirm" (or "make oath") "and say".

**26.**

Every affidavit should clearly express how much is a statement of declarant's knowledge and how much is a statement made on his information or belief and must also state the sources or ground of the information or belief with sufficient particularity. Note. In case of affidavits under Order XXXII, Rule 4 (A)(3), the officer before whom such affidavits are sworn, should see that the words "and that he (she) is a fit person to be so appointed" are always inserted in the affidavit by the deponent. The affidavit should also state-(i) whether the minor has an appointed guardian or declared guardian and if so, who that person is; (ii) if not, who the natural guardian is and in the absence of a natural guardian, who actually has the custody of the minor; (iii) where any person other than one of the above is proposed as guardian for the suit, the reason for not proposing the person omitted.

**27.**

(1) When a particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must use the expression "I am informed" and, if such be the case, should add "and verily believe it to be true"; and he must also state the source or ground of the information, or belief, and the name and address, with sufficient description for the purpose of identification of the person or persons from whom he received such information. When the statement rests on facts disclosed in documents or copies of documents, procured from any Court of Justice or other source, the declarant shall state what is the source from which they were procured and his information, or belief as to the truth of the facts disclosed in such



document.(2)Documents (other than those on the records of the case) referred to in the affidavit shall, as far as possible, be annexed to it.

**28.**

All erasures, errors, interlineations, etc., in the affidavit shall be legibly initialled and dated by the deponent.

**29.**

(1)Subject to the exceptions set out in sub-rule (2) below, the charge for administering the oath to the deponent shall be one rupee for each affidavit and this charge shall be paid by means of court-fee stamp affixed to the affidavit.(2)No charge shall be made in respect of the following affidavits :-(i)Affidavits made by process-servers deposing as to the manner of the service of a process;(ii)Affidavits made by public officers in virtue of their office.[High Court of Madhya Pradesh Notification No. 3294, dated the 17th March, 1959]

**30.**

If the deponent is not personally known to the officer administering the oath he shall be identified by some person whom that officer does know, otherwise by at least two respectable witnesses which person or witnesses shall sign the endorsement prescribed by Rule 34 below.

**31.**

Where the deponent is a pardanashin woman, she shall be identified by a person to whom she is known and before whom she is accustomed to appear unveiled and such person shall sign the endorsement prescribed by Rule 34 below.

**32.**

(1)The Officer shall, before administering the oath, ask the deponent if he has read the affidavit and understands the contents thereof and if the latter states that he has not read it, or appears not fully to understand the contents thereof, or appears to be blind, illiterate or ignorant of the language in which it is written, the Officer administering the oath shall read and explain or cause some other competent person to read and explain in his presence, the affidavit to the deponent in a language which both the deponent and the officer administering the oath understand.(2)When an affidavit is read, translated or explained as herein provided, the officer administering the oath shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the deponent seemed perfectly to understand the same at the time of making the affidavit and made his signature or finger impression in the presence of the officer; otherwise the affidavit shall not be used in evidence.

**33.**

The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous and may order the costs of any application to strike out such matter, if granted, to be included in the costs payable by the offending party.

**34.**

The Officer administering the oath shall make the following endorsement on every affidavit sworn before him and shall date, sign and seal the same : "Sworn before me on the.....day of.....20.....by.....son of .....who is personally known to me (or) who has identified by.....whose signature is/signatures are hereto appended. Signature Designation" Seal A rubber stamp may be used for the form of this endorsement. In addition, the particulars required by Rule 32 (2) shall, where necessary, be added in manuscript and dated, signed and sealed by the officer administering the oath.

**35.**

In administering oaths and affirmations to deponents the following form should be used :- "Oath : I swear that this any declaration is true, that it conceals nothing, and that no part of it is false. So help me God. Affirmation I solemnly declare that this my declaration is true, that it conceals nothing, and that no part of it is false".

**36.**

The Court should be careful to enforce Order XIX, Rule 3, and except in interlocutory applications [see Order XIX, Rule 2] to confine the contents of affidavits to such facts as the declarant is able to prove of his own knowledge, and to refuse statements founded on mere belief.

## **Chapter II**

### **Presentation, Registration, etc. and Examination of Plaints**

**37.**

Plaints should be presented at any time during the Court hours specified in Rule 1 to the Court or to such office as the Court appoints in this behalf by an order in writing (Order IV, Rule 1). A ministerial officer so appointed shall be the chief ministerial officer for the purpose of Order VII, Rule 9 (4). Note 1. - At the headquarters of a civil district the officer to be so appointed should either be the Clerk of Court or the Deputy Clerk of Court or such other officer as the District Judge may think fit. It should be borne in mind that each individual Court must record an order in writing for this purpose and a general order by the District Judge is not sufficient. Note 2. - This rule applies also to memoranda of appeal and applications [Order XIV, Rule 1 (1), and Order XXI, Rule 10],

**37A.**

The official whose duty it is to receive complaints, applications, etc., should endeavour to check them immediately and obtain forthwith the necessary corrections, if any. If circumstances preclude immediate checking, he should not detain the tenderer but should inform him of a time and date for his attendance. Such date should not be more than two working days ahead except in the case of complaints, etc., where accounts have to be checked. In such cases, the date fixed must be either within two working days or at the latest on the last working day of the week. When a time and a date are fixed these should be entered on an order-sheet attached to the document tendered. At outstations the presiding Judge and at headquarters a Judge appointed for this purpose by the District Judge should, at least one or two days in a week at the time of the rising of the Court, inspect the documents pending with the reception officer under this rule to see that there is no delay and should note the fact of this inspection in his Judicial Diary. The Reception Officer is Forbidden to Refuse to Receive Complaints, Applications Etc., Presented to Him on The Ground that he is not Able at The Time to Check them

**38.**

The officer receiving the complaint shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be directed to ascertaining among other things -(i) Whether the complaint has been properly stamped in accordance with the valuation put upon it. (See in this respect the instructions in. Appendix II to Part V). (ii) Whether it has been properly signed and verified (Order VI, Rules 14 and 15). (iii) Whether it complies with the requirements of Order VII, Rules 1 to 80. (iv) Whether in the case of recovery of land it sets out sufficient specification of the land claimed, i.e., if an entire plot or field, to which a separate survey number has been assigned is claimed, whether the complaint states that survey number and its area, or, if a portion only of such a survey number is claimed, whether the complaint defines specifically the area claimed and its position and boundaries are clearly shown in the map filed with the complaint. (v) Whether it is accompanied by the necessary copies of complaint and process fees [Order IV, Rules 1 (1) and 1 (2)]. (vi) Whether the documents attached to the complaint (if any) are accompanied by a list in the prescribed form [Order VII, Rule 9 (1)]. (vii) Whether it is accompanied by plaintiff's registered address as required by Order VII, Rule 19. (viii) Whether in the case of minor plaintiff and defendants the requirements of Order XXXII, Rules 1 and 3, have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed guardian ad litem of the minor defendant(s) has been filed. (ix) Whether the suit is within the pecuniary and territorial jurisdiction of the Court. (x) Whether the claim is apparently within time. (xi) Whether the power of attorney has been properly accepted and endorsed by the pleader and whether in the case of illiterate executants it has been attested as required by Rule 9-A.

**39.**

(1) The officer after examining the complaint shall record his opinion on it in the following form: "Presented on.....by ..... properly drawn up, apparently within time and properly stamped." He will then, where necessary, enter it in his register of complaints and applications received

(No. 11-78) and transmit it to the Court concerned. Note. - This rule applies also to memoranda of appeal and applications. (2) The register shall be destroyed after three years from the date of the last entry made therein. (3) The officer examining the plaint shall refer any plaint which he considers should be returned or rejected for any reason for the orders of the Judge.

#### 40.

A plaintiff may, if he so desires, attach to his plaint an acknowledgement slip in the form given below after filling columns (1) to (3) thereof. The Officer, receiving the plaint, shall, after verifying the entries in columns (1) to (3), make the requisite entry in column (4) and return the slip forthwith to the person presenting the plaint. The presiding officer of the Court shall satisfy himself, from time to time, that such slips are returned to the parties without delay :Acknowledgment Slip

Name and address of the party presenting the plaint, memorandum of appeal, or application	Particulars of the document presented together with the names of parties	Description of the Court in which the document is filed	Date of receipt and signature of the Officer receiving the document
(1)	(2)	(3)	(4)

#### 41.

A plaint on admission shall be registered in the register of civil suits and entered in the judicial diary' and cause list. Ordinarily registration should be within two days of the date of admission. [Chapter III] [Rules in Chapters III to VII substituted vide Notification No. 4806-III-1-5-57, dated 23-5-1961, Published in M.P. Rajpatra, Part IV (Ga), dated 2-6-1961 at page 346.] Service of Processes and Work in the Nazarat

### 1. Processes and Their Service

#### A. General

#### 42.

(1) The attention of all Courts is drawn to the necessity for the exercise of care in the drafting of processes and orders of all descriptions. (2) Every process or order issued by a judicial officer should show the name and description of the officer and the place and district of issue. (3) All copies of plaints and other documents which are to be served with processes shall be written or typed legibly on durable paper of foolscap size. If carbon copies are filed they must be distinct and legible.

#### 43.

(1) Unless the Court otherwise directs the hour of attendance to be entered in every summons or process shall be 10-30 a.m. (2) Summonses to expert witnesses and professional witnesses, such as

registered Medical Practitioners, should mention the time when the Court is likely to examine the witnesses and should, as far as practicable, record their evidence at about the time so mentioned.

**44.**

Processes should ordinarily be issued in the language of the Court, but where processes are sent for service to another Court where the language is different, they should be accompanied by a translation into English, certified by the transmitting Court to be correct. Note. - Processes issued to European and Anglo-Indians should be in English.

**45.**

Persons on whom processes are to be served or executed shall be described so as to identify them clearly. In the case of small villages it may be sufficient to mention the name of the village, tahsil and district in which the person resides and his father's name and occupation. But in the case of large villages and towns the name of the locality, municipal ward, sheet, lane and number of the house (if any) in which he resides should be given.

**46.**

(1) Process-fee must be paid in court-fee stamps and not in cash. The stamps shall be affixed to a memorandum to be written on a sheet of paper and filed in Court. The memorandum should state the name of the Court, number and description of the suit, appeal or proceedings, the value of the claim, the value of the court-fee stamps affixed, and details of the processes to be issued. If the memorandum be an application for the issue of a process, it must, in addition to the requisite stamps for the process-fee, bear such stamps as are necessary for its own validity. Note. - In dealing with application to summon witnesses the attention of Courts is drawn to clause XIV of Section 19, Court-fees Act. (See also Appendix II to Part V). (2) If a party presents in duplicate a memorandum for the issue of a process and desires that the process-writer should acknowledge it, the latter shall sign and date the duplicate copy by way of acknowledgment of the original and return it to the applicant. The duplicate copy will be a valuable evidence in any instance where the memorandum is unduly delayed or; there is any irregularity in its disposal.

**47.**

A party who desires the attendance of any witnesses before the Court, or before a Commissioner appointed to take evidence, shall file a list of such witnesses stating the full name, residence and occupation or description of each person and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case, specifying the date and description of the document so as to identify it. The party shall, with the requisite process-fee, pay into Court the prescribed diet-money, travelling allowance and other expenses. Note. - For the rules relating to diet-money, travelling allowance and other expenses (See Rules 485 to 489).

**48.**

(1) With reference to clause (c) of Rule 8-B of Order XXVII, and Rules 6 to 9 of Order XXXIII of the Civil Procedure Code, the State Government have appointed the Collector of every revenue district in Madhya Pradesh to be the Government Pleader of that district for the purpose of those rules. (2) With reference to clause (a) of Rule 8-B of Order XXVII, the Central Government have appointed the Advocate-General, the Government Advocates, the Additional Government Advocates and Deputy Government Advocates in the High Court for the High Court of Madhya Pradesh and its Benches and the Government Pleader of every district in Madhya Pradesh for other Courts to be the Government Pleaders for the purposes of Order XXVII of the Civil Procedure Code. The Public Prosecutor or other officer appointed by the State Government as the Government Pleader of such district generally or for the purposes of the Central Government is the recognised agent of the Central Government. This does not apply to suits against Railway Administrations nor to suits against Public Officers in the service of the Central Government. [G.S.R. 1412, Ministry of Law, Department of Legal Affairs, dated 25th November, 1960, as amended by G.S.R. 148, dated 1st February, 1961]. B. Service and Execution of Processes

**49.**

(1) Processes sent for service to other districts under Order V, Rule 21 of the Civil Procedure Code, should be sent direct to that Court subordinate to the District Court having jurisdiction in the place where the person to be served resides. The Court receiving such processes should re-register them as its own register regarding processes and process fees and service them in its own processes. No entries of the process-fees levied on account of these processes should be made in the register, and the columns relating to these entries should be left blank. All processes received from other Court though situated in the same district should similarly be treated. (2) In cases where a District Court receives a process for service in an outlying tahsil from a Court of another State in India, the process should be registered in red ink in the register of the District Court as well as that of the outlying Court which serves it. Note. - The Nazir or the Naib-Nazir, as the case may be, shall place the register once a month before the officer-in-charge of the Nazarat of the Judge of the outlying Court, who shall check the entries made in red ink and issue necessary order for avoiding delay. The officer or the Judge shall then put his initials below the last entry as indicating that he has done so.

**50.**

(1) When any person has been arrested or movable property seized for production at the district headquarters by a process server of an outlying Court under a warrant issued by a superior Court, the process-server shall forthwith bring such person or property to the Nazir of the Courts at the district headquarters at the cost of the person executing the decree. (2) The Nazir shall immediately endorse a receipt in the process-server's work ticket and send him back to his own Court, and shall produce such person or property before the Court which issued the process. (3) When money has been realized on any such process, it shall be received by the Naib-Nazir of the Court executing the process and duly transmitted by money-order with the process at the expense of the judgement-debtor to the Court concerned. C. - Method and Proof of Service

**51.**

Service should always be personal wherever practicable (Order V, Rule 12) and the Courts ought not to proceed ex parte upon anything short of personal service, save when substituted service has been ordered and effected. Note 1. - This will present a Court proceeding ex parte on the basis of service under Order V, Rule 17, in cases in which the defendant could not be found. Particular care is required at this stage as otherwise a decree may be passed against a person who has, in fact, no knowledge of the suit's existence. Different considerations arise once the party has made an appearance and has filed a registered address. In the latter case full use can be made of Order V, Rule 17; in the former it is preferable to require an application for substituted service with all the consequential safeguards. Note 2. - Personal service shall be deemed to include all cases in which the process is delivered or tendered to the person concerned or his agent empowered to accept on his behalf, whether accepted or refused, including service, under Order V, Rule 13 and 14, Order XXIX, Rule 2, and Order XXX, Rule 3, and, where Order V, Rule 15 of the Civil Procedure Code, applies, cases in which the process is accepted by an adult male member of the family of the person to be served who is residing with him and the person to be served cannot be found. Note 3. - The signature required under Order V, Rule 16, should, in the case of illiterate persons, be held to mean the thumb-impression. Process servers on duty should therefore be supplied with pads and ink for taking such impressions and should be instructed in their use.

**52.**

(1) A party shall not ordinarily be required to supply an identifier for the purpose of serving a summons or notice or any other process, whether issued by any subordinate Court of the High Court or received from a Court outside its jurisdiction, on a defendant, respondent, witness or other person and the serving officer shall serve the summons, notice or process after due enquiry as to the identity of the person on whom, or the house or property where the same is to be served. The serving officer shall, where he is unable to serve the process, obtain, whenever possible, the endorsement by signature or thumb impression of at least two persons of the locality. Note. - There being no legal obligation upon a plaintiff, decree-holder or appellant to supply an identifier for service of any process, no process-server should return unserved any notice, process or summons merely because no identifier could be had at the place of service. He must make every possible endeavour to find out the person on whom, or the house or property where the process is to be served. (2) If it appears to the Court that sufficient information is not given as to the identity and place of residence of the person on whom, or the house or property where a process is to be served, or if the Court is satisfied from the declaration of the serving officer or upon his examination on oath (if necessary) that the person to be served or the house or property could not be identified after due diligence and enquiry, it may ask the party concerned to supply an identifier. (3) Summonses and notices issued for service on persons employed in the Government of India Secretariat and its attached and subordinate offices should always specify the subject-matter of the case in which they are issued and the Department or Office of the Government of India concerned.

### 53.

(1) A process shall be served by delivering a copy of it to the person addressed. If the person is literate he shall be required to sign the original as an acknowledgment of receipt. If he is illiterate, his thumb-impression should be taken on the original process. (2) If the person addressed or his agent or an adult male member of his family refuses to receive the process or refuses to sign or give his thumb impression but wants to retain the copy, it shall not be made over to him and he shall be informed verbally of the nature of the process. In either case service shall be effected and provided in the manner prescribed in Order V, Rule 17, and it should also be proved that the party was informed that the document tendered was a summons or notice and that he was made acquainted with the nature and contents thereof.

### 54.

The attention of the Courts is drawn to the provisions of Order V, Rule 13, Civil Procedure Code, which states that in a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager, or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service and that the master of a ship shall be deemed to be the agent of the owner or charterer.

### 55.

The attention of the Courts is also drawn to the provisions of Order V, Rule 14, Civil Procedure Code, which lays down that where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

### 56.

If the person addressed is absent from his residence at the time of attempted service and there is no likelihood of his returning there within a reasonable time and there is no agent empowered to accept service on his behalf, nor any other person on whom service can be made, service should be effected in the manner directed in Order V, Rule 17. It should be proved according to the circumstances of the case by the declaration of the serving officer and, if necessary, by the affidavit or solemn declaration of some other person or persons (if any), acquainted with the facts that the person was absent from his residence at the time of attempted service and that there was no likelihood of his returning within reasonable time and that there was no agent empowered to accept service, nor any other person on whom service could be made; and in any case that the house on the outer door or some other conspicuous part of which a copy of the process was affixed, was the ordinary residence or place of business of the person addressed at the time when it was so affixed. The Court may also proceed under Order V, Rule 19. Note 1. If the person is temporarily absent from home when the



server calls, it cannot be said that he cannot be found and so cannot be served personally. If the person has gone to his field or to the bathing ghat or a temple, etc., or to a friend or relative in the town or village or on a short visit to a neighbouring village or town, the server should make reasonable search for him. Note 2. - If the process-server has reason to suspect that the person to be served is in hiding, he should repeat his visit to the house; he may also be able, with the assistance of respectable persons in the neighbourhood to induce the man to accept service. Note 3. - If the server has reason to believe that there is a good prospect of personal service if he stays for a short time in the village, he may stay there for not more than six hours, or he may re-visit the village after serving processes in the neighbouring villages. Note 4. - When after the exercise of all due and reasonable diligence the person though temporarily absent from home, can not or is not likely to be found and if not less than three weeks, or such other period as the District Judge may fix, will still remain before the hearing when the server returns to his headquarters the process should not be affixed to the house but brought back so that it may be sent out again.

## **57.**

If the service is made under Order V, Rule 15, it should be proved in like manner that the person was absent from his residence at the time of attempted service and there was no likelihood of his returning within a reasonable time, and that he had no agent empowered to accept the service, and that the person, to whom the process was delivered was an adult male member of his family, and was actually residing with him at the time of such service. Note. - Servant is not a member of the family within the meaning of this rule.

## **58.**

If the service is made under Order V, Rule 14, it should be proved in like manner that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service, and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immovable property forming the subject-matter of the suit.

## **59.**

If the return of service is under Order V, Rule 20, and the order directs substituted service by affixing it should be proved in like manner that the house, upon the door or other conspicuous part of which a copy of the process was affixed, was the house in which the defendant or respondent is known to have last resided, or carried on business or personally worked for gain, and in other cases that the service was made in all respects in conformity with the order for substituted service, which should accompany the process.

## **60.**

If the person addressed has no place of residence and he cannot be found or if he is dead, these facts

shall be stated in the report together with the names and addresses of at least two persons from whom the facts are ascertained. If the person addressed has ceased to live at the place, his present address, if available, and the sources of information should be reported.

**61.**

The attention of all Courts is drawn to Rule 20-A of Order 5, Civil Procedure Code, which provides for the issue of summons by registered post and for holding service good on the basis of an acknowledgement purporting to be signed by the defendant or his agent or on the basis of a postal endorsement that the defendant or the agent refused to receive the summons.

**62.**

If the service is made under Order V, Rule 12, on an agent, it should be proved that such agent was empowered to accept service, under Order III, Rules 2, 5, 6; Order XXVII, Rule 2, or Section 85 (1), Civil Procedure Code, or by virtue of appointment for that purpose in writing. The party causing the service to be effected must, in both the last mentioned cases, furnish the necessary proof to this effect. Note. - All the General Managers and Deputy General Managers of the Indian Government Railways have been authorised to act ex-officio for and on behalf of the Central Government in respect of all judicial proceedings in which the respective Indian Government Railway may be concerned. As these officers are thus recognised agents of the Central Government within the meaning of Rule 2. of the Order XXVII of the First Schedule to the Code of Civil Procedure, summonses, etc., can be served upon them under Rule 3 of Order III of the Code. The processes, etc., should, therefore, be sent direct to the officers concerned instead of to the Secretary to the Government of India.

**63.**

If the service was made under Order XXIX, Rule 2, it should be proved that the summons or notice was left at the registered office of the company or, if there is no such office, at the place where the company carries on business, or that it was delivered to any director, secretary or other principal officer.

**64.**

If the service is made under Order XXX, Rule 3 (b), it should be proved that the person on whom the summons was served had at the time of service the control or management of the partnership business.

**65.**

Where personal service has been effected, an acknowledgement of the receipt of (a) duplicate copy of the process, (b) any sum paid for expenses, and of (c) any copy of plaint or other document, shall

be taken on the back of the original process. If a person or house is identified by witnesses, the signature or thumb mark of each witness shall similarly be taken on the back of the original process. Whenever a process server pays any amount for diet money and for travelling allowance to a witness at the time of serving the summons on him, he shall obtain on the summons an endorsement of such payment from the witness, if literate; otherwise he shall obtain such an endorsement from a literate attesting witness. Failure to comply with these instructions should be explained by the process-server.

**66.**

The Court should in all cases obtain the proof which is above described as requisite either by the declaration in the prescribed form of the person by whom the service was affected and, if necessary, by the affidavit or solemn declaration of some other person or persons (if any) who may have accompanied the serving officer for identifying the party to be served or otherwise assisting or directing the serving officer, or if deemed necessary, by the examination in Court as witnesses of such persons as the Court may think fit to examine.

**67.**

When service on a person belonging to a public department or railway company is to be effected through the head of the office in which the person to be served is employed, the summons shall be sent, together with the subsistence and travelling allowance, if any, to that officer who will serve it as required by Order V, Rule 29. Note. - If the process is issued for direct service on the person to whom it is addressed the Court shall simultaneously send an intimation of the fact to the official superior of the officer or servant summoned, in order that, if need be, arrangements may be made for the performance of the duties of such officer or servant during his absence.

**68.**

If a patel is summoned as witness, the summons should be sent to the Tahsildar, or when the district is under settlement, to the Settlement Officer, but if the patel is on leave he should be treated as a private individual.

**69.**

(1) In the case of Assistants and Head Masters or Superintendents of Government Schools the process should be served through the Inspector of Schools to whom they are subordinate. (2) A summons to an Assistant or Head Master serving under a local authority should be served on him direct.

**70.**

In addition to the modes of the service in the above rules, it is open to the Court, where the person to be served resides in India, but outside the limits of Madhya Pradesh to send the process by registered post to him at the place where he is residing or carrying on business. An acknowledgement purporting to be signed by him or an endorsement by a postal servant that the defendant refused to accept the registered packet may be deemed by the Court issuing the summons to be prima facie proof of service.

**71.**

(1) In determining whether the service is good or sufficient, the attention of the Courts is drawn to the necessity of strictly following the requirements of law in the Civil Procedure Code. (2) Whenever process is returned under Order V, Rule 17, and the return is not verified by the affidavit of the serving officer, it is incumbent upon the Court to make an enquiry under Order V, Rule 19, and to record a distinct declaration of due service, if satisfied, or to order such service, as it thinks fit.

**72.**

(1) Every process-server must immediately after service or non-service writes clearly with his own hand at the place of service and in the presence of witnesses (if any), his report of service or non-service and must also state the date, hour and exact place of service or non-service. (2) All returns of service or non-service shall be made in form (No. II-4) immediately after service or non-service. The space on the back of the form may be utilised, where necessary, for continuation of the entry in column 4. The process-server shall sign at the foot of each return before making the same over with the process to the Nazir or Naib-Nazir. Instructions for the Guidance of Process-Servers and Returning Officers I. If the process-server is personally acquainted with the person to be served the fact should be stated. If he is not so acquainted, it should be stated how the process-server satisfied himself about the identity of the person. II. It should be seen that the name of the person who accepts service corresponds exactly with the name given in the process. When the signature in token of acceptance differs from the name given in the process, the discrepancy should be explained. III. Where the process is served on some person other than the person named therein, who accepts the process on his behalf it should be stated whether such person is an adult and whether he is living with and is undivided from the person on whose behalf he accepts service. IV. Where service is accepted by an agent, it should be stated whether such person is duly authorised to accept service. V. Where a person refuses to accept the process, the grounds thereof, if any, and the names of the persons witnesses the refusal should be given. VI. When personal service is not possible on pardanashin women, an attempt should be made to serve on some responsible male member of the family. VII. Where the service has been effected by affixing a copy of the process to the house of the person to be served, the process-server shall state in column 3 the name and address of the person who showed the house or the fact that he knows the house himself, as the case may be, and in column 4 the following matters :- (a) the number of times and the dates and hours at which he went to the house; (b) the attempts made by him to find the person to be served; (c) whether he had any, and if so, what reason to suppose that such person was within the

house or its neighbourhood or was endeavouring to evade service;(d)whether any male member of the family over 18 years of age was residing with him;(e)whether the house was open or locked when the copy was affixed to it;(f)if the person was absent from the house, his whereabouts, if known, and the distance of the place to which he is said to have gone;(g)any other circumstances showing the necessity for affixing.VIII. If the person to be served refuses to sign the acknowledgment of service, it shall be stated in column 4 that he was informed of the nature and contents of the process.IX. When a notice is served on a minor personally the server shall state in his report the apparent age of the minor.X. Where substituted service has been ordered, the manner in which the process was served shall be fully and exactly stated in column 4, with the special reference to the order for substituted service.XI. where a summons or notice has to be served upon a corporation, firm or persons carrying on business in names other than their own, the process-server shall state in column 2 whether the process has been served at the registered office or principal place of business of the corporation or firm concerned, and note, if possible, in column 4 the position of the officer of the corporation or firm on whom the process has been served.XII. Any sum paid for expenses to a witness shall be entered in the remarks column.XIII. In case a server while on his beat is taken ill or is prevented by some cause beyond his control, such as floods or the like from returning to his headquarters by the date fixed in his work-ticket he shall send to the Nazir or Naib-Nazir by "post payable" such processes as have been dealt with by him.XIV. When in execution of a warrant a process-server realizes money he should not pay the same direct to the decree-holder or his agent, but must make it over to the Nazir for being credited into Civil Court deposit. The process-server shall remit to the Court all sums in excess of Rs. 50 realized under a warrant or warrants by money-order from the nearest post office at the expense of the judgement-debtor or judgement-debtors :Provided that when such post office is either at a longer distance than the headquarters or is equidistant but in a direct different from that in which the process-server is travelling he should return to the headquarters immediately and pay the whole amount realised by him to the Nazir or the Naib-Nazir, as the case may be, before proceeding further on his journey.XV. The process-servers should understand the provisions of Sections 55 (1) and 62 (2), Civil Procedure Code, and remember that when they are charged with execution of warrants of arrest or warrants of attachment of movables, there is no prohibition against breaking open any outer door of a dwelling house when the house is in the occupancy of the judgement-debtor and he refuses or prevents access thereto.XVI. (a) Section 46 of the Code of Criminal Procedure requires that the officer making an arrest shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action. A note relating to such submission or touching or confirming of the body should, therefore, be made by the officer in his report in the warrant.(b)The officer shall have the warrant of arrest in his possession at the time of making an arrest and shall notify the substance thereof to the person to be arrested, and if so required, shall show him the warrant.(c)If a judgement-debtor is arrested and if he subsequently pays the amount due from him he shall forthwith be released.XVII. All returns of service or non-service of processes received from Courts not in the station whose staff was entrusted with the service and those relating to processes received from other Courts and returned under Rule 60 foregoing shall be verified by an affidavit made before an officer empowered in this behalf.

**73.**

When the summons or notice which has been served is the summons or notice of another Court transmitted to the serving Court for the purpose of service only, then upon service being effected, the latter Court should re-transmit the summons or notice to the Court by which it was issued, together with (i) the process server's return, (ii) his declaration or deposition and the affidavit or solemn declaration or deposition of the witnesses (if any) relative to the facts of service, (iii) the record of such Court's proceedings with regard thereto (if any) and (iv) in a case where any of these documents is in a language different from that of the district from which the process issues, an English translation of such document certified by the transmitting Court to be correct.

D. Additional Rules Relating to the Service of Notices, Etc. Issued by The High Court

**74.**

On receipt of notices of appeal, applications, etc., issued by the High Court, the lower Court shall cause their service without the payment of any further fee and without any further action by the appellant or applicant : Provided that the appellant or applicant or some one employed by him may, in any particular case, if he so desires, accompany the process-server for the purpose of facilitating the service of the process.

**75.**

The Lower Courts shall issue all such notices as early as possible and in their returns of service, shall in every instance insert (a) the date of receipt of notice, (b) date of delivery to the process-server, and (c) date of return by the process-server.

**76.**

It shall be the duty of the lower Court to make every effort to serve the notice in sufficient time before the date fixed, and, if such service be impracticable to state, when returning it to the High Court, the reasons thereof. The lower Court shall satisfy itself that a valid service has been made or that there has been a failure of service and shall certify such opinion with the reasons in case of failure of service. The certificate shall be accompanied by the return of service or failure to serve the notice and the declaration of the process-server specifying the fact and mode of service or the reason for non-service.

E. Service On Persons In Civil, Naval, Military Or Air Force Employ

**77.**

Attention is invited to the provisions of Order V, Rules 27 and 28 Order XVI, Rule 8. In such cases reasonable time should be allowed for the making of arrangements for the relief of the persons summoned and to enable them to appear themselves or to appoint a representative or make such other arrangement as may be necessary.

## 78.

When the person to be summoned is an officer of the Army or Air Force the process-server who is to serve the summons should take it under cover to the officer in command of the regiment or detachment with which the person to be served may be serving and apply for his assistance. With the assistance so obtained, the process-server should serve the process and make his return direct to the Court. Note. - An officer may also be summoned, if the Court thinks fit, by letter as provided by Order V, Rule 30, and Order XVI, Rule 8.

## 79.

(1) When the person to be summoned is a soldier or airman, the process must be sent for service to his Commanding Officer together with a copy to be retained by the person summoned as required by Order V, Rule 28. (2) Where, for security reasons, the location of an Army unit is not known and it becomes necessary to send a process to an Army Post Office, necessary particulars such as the name of the unit and its postal address should be furnished. Note. - The following instructions for the dress of officers and soldiers appearing before a Civil Court have been approved : (1) An officer or soldier required to attend a Court in his official capacity should appear in uniform with sword or sidearms. Attendance in an official capacity includes attendance- (a) as a witness, when evidence has to be given of matters which came under the cognizance of the officer or soldier in his military capacity, (b) by an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command. (2) An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform. (3) An officer or soldier shall not wear his sword or sidearms if he appears in the character of an accused person or under military arrest or if the presiding officer of the Court thinks it necessary to require the surrender of his arms, in which case a statement of the reasons for making the order shall be recorded by the presiding officer, and if the military authorities so request, forwarded for the information of the concerned Chief of Staff. (4) Fire-arms, shall under no circumstances be taken into Court. F. - 1. Service on Members of Parliament and State Legislatures

## 80.

(1) Article 105 (3) of the Constitution of India provides the same privileges for Members of Parliament in India as are enjoyed by the Members of the British Parliament. One of the privileges is that on service of summons can be effected upon the Members when they are within the precincts of the Parliament. The Courts should not, therefore, attempt to serve summons through the Presiding Officer or through the Parliament Secretariat. The appropriate procedure would be for the summons to be served direct on the members concerned outside the precincts of the Parliament, i.e., at their residence or at some other place. (2) The procedure laid down in sub-rule (1) should be followed for effecting service of summons upon Members of the State Legislature, who enjoy the same privilege under Article 194 (3), and Article 238 of the Constitution.

## **2. Arrangement and Distribution of Work in the Nazarat**

### **81.**

(1) Process-servers must be required to attend carefully to the directions of the Code of Civil Procedure and the Rules and Orders (Civil) as to the service of processes. It shall be particularly impressed upon them that whenever practicable, the service must be personal service as defined in Note 2 under Rule 51. (2) It shall be the duty of the Nazir-(i) to explain to the process-servers the directions in these rules and to point out the manner in which various kinds of processes are to be served and returns are to be verified; (ii) to see that processes are promptly sent out for service and fairly distributed amongst the process-servers and that a fair average of work is attained by each process-server; (iii) carefully to scrutinize the work-ticket of the process-server and every return submitted by him each time he returns from beat after service of processes; and the reasons given for failure of service; and to report to the officer in charge of the Nazarat all cases of unreasonable delay in service, misconduct, neglect, or improper discharge of duty for such disciplinary action as the officer in charge may think fit and proper.

### **82.**

All Nazirs and Naib-Nazirs, as the case may be, will be held responsible to the presiding Judge of each Court at every station for the due and regular service of all processes entrusted to them for service and in each case for the correctness of the statements made in the return. Note. - Service or execution of processes by Nazir or Naib-Nazir can only be allowed under special circumstances when the Court is satisfied by affidavit or otherwise that there has been previous resistance and that execution will not be effected by ordinary process-servers without danger to the public peace. Deposit of pay of the officer is not required in such cases.

### **83.**

(1) With the approval of the District Judge, the officer in charge of the Nazarat shall divide the area of the tahsil or tahsils into convenient circles and processes should be sent out in these circles at regular intervals. The boundaries of the circle and the intervals at which processes are sent out may be varied from time to time as experience dictates. A map showing the boundaries of the circles and the villages included in each circle and a list of villages in each circle should be displayed in every Nazarat. (2) The Nazir or the Naib-Nazir should prepare quarterly a statement showing the dates on which process will be sent out for the service in any particular circle and the approximate time required for service in that circle and submit the same to the District Judge for approval. A copy of the statement and a copy of the list of the villages included in each circle should be displayed in each Court-room at the station. During the summer vacation process shall issue on such dates as the District Judge or in his absence the senior Judge on duty shall fix.



## 84.

Returnable dates should not be fixed at random, but sufficient time should be allowed so that the processes for one trip may all be served and returned at a reasonable time before the dates fixed in the cases concerned. In fixing dates, the distance to be travelled, the season of the year, the conditions of the locality, the number of processes made over at a time, etc. should be taken into consideration. Note. - When a process-server entrusted with the service of several processes finds that there is no reasonable chance of his being able to serve all the processes in the same trip and to return them in sufficient time before the due dates, he should at once send back by post the processes that cannot be served, so that the Nazir may issue such processes to other process-servers for service if there is sufficient time before the hearing dates.

## 85.

To equalize the work of process-servers a certain amount of short beat work as well as a certain amount of long beat work should be given to each process-server and there should also be, as far as possible, equality in the number and kind of processes distributed. Note. - It shall be particularly seen that all process-servers to whom processes have been distributed for service leave their headquarters immediately on receipt of processes.

## 86.

Processes should ordinarily be issued to process-servers in the order of their return. Later processes for a particular circle should not be issued to the exclusion of processes for that circle which were filed earlier.

## 87.

Each tour of a process-server shall be planned with a view to avoid as far as possible going over ground already once covered. The processes allotted to him shall be arranged in the order in which the villages where they are to be served should be visited. Columns 1 to 8 of the one or more forms of work-ticket shall then be filled up in the order in which the processes have been arranged, a duplicate of each being taken by means of carbon paper. After checking the ticket the Nazir shall endorse at the end the total number of processes and the total amount of diet-money to be entrusted to the sever. Note 1. - Unless the process-server has duly accounted for all processes and diet-money entrusted to him, fresh processes for service should not be given to him. Note 2. - The work-tickets of each process-server shall be bound up separately for the calendar year, the duplicates being pasted on to the corresponding original as soon as they are returned, and the bound volumes destroyed after three years.

**88.**

The Nazir of the Naib-Nazir, as the case may be, shall maintain a register of work done by process-servers in the prescribed form (No. 11-55). The statistics for this register will be extracted by the Nazir from the work-tickets returned during the preceding month. The work of each server should be shown against his name in the several columns of the register. If a server has done work in more than one circle, details will be given against his name separately for each circle, all entries relating to town service being made in red ink, so that the extent of his branch of the work may be readily ascertained. The reason for retention at headquarters should be briefly explained in the remarks column. The register shall be put up to the officer in charge of the Nazarat on the 5th of each month and submitted quarterly in January, April, July and October for the District Judge's information and orders. The District Judge shall return the register promptly with his order. Note. - The register shall be preserved for five years after it has been completely filled in.

**89.**

Processes made over to the Nazir for sendee must be returned by him to the issuing Court as soon as possible after they are received back from the process-servers.

**90.**

(1) Process-servers should not be detained at the headquarters for a longer period than is necessary. When they are in the headquarters they should attend office punctually at 10.30 a.m. and perform such miscellaneous duties as may be assigned to them. (2) Process-servers must report themselves to the Nazir and make over to him work tickets and all processes with which they were entrusted for service and also diet-money or other sums if any, immediately on return to headquarters from their beat. If the date of return falls on a holiday an account of money entrusted to them shall be rendered on the next working day. The Nazir must see that this rule is strictly obeyed by each process-server and report cases of non-compliance to the Judge in charge. Note. - Process-servers when on duty in Court and out on process-serving work must always wear and display their standard badges.

## **Chapter IV**

### **Foreign Processes**

#### **1. Service in Places Outside India**

**91.**

The provisions of the Civil Procedure Code as to service outside India (Order V, Rules 25 and 26; Order XVI, Rule 8; Order XLVIII, Rule 2) are applicable to the service of summonses to appear and answer, notices of appeal, summonses to give evidence or produce documents and generally to all orders, notices and other documents required by the Code to be served

**92.**

The main provision of the Code for service outside India is that such service shall be by registered post. The summons shall be forwarded by registered post to the defendant and not sent to any official for service.

**93.**

The summons should be sent by registered post prepaid for acknowledgment, and if the defendant does not appear or is not represented proof should be given by affidavit of the party that at the time of the service in the defendant ordinarily resided and was actually residing at the foreign place in question. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused to accept the registered packet, may be deemed by the Court issuing the summons to be prima facie proof of service.

**94.**

(1) Service by post while necessarily confined to case where there exists postal communication between the place where the Court is situate and the place in which the person to be served resides will, in practice, cover the great majority of cases and resort is not to be had to any other mode of service upon persons outside India save for sufficient reason. (2) The principle is that though there are other modes of service, e.g., through official channels, the Code does not require service outside India to be made by official channels.

**95.**

(1) The special provisions made by clause (a) of Rule 26 of Order V was intended for sending summonses to Indian Agents in foreign territory There are no such Political Agents or Courts at present. (2) Clause (b) of Rule 26 of Order V is not limited in scope as clause (a), but it relates to Courts in foreign States which are notified by the State Government.

**96.**

(1) Clause (a) of Section 29, C.P.C. relates to service of summonses and other processes issued by civil or revenue Courts established in any part of India to which the provisions of the Code do not extend. Those parts of India are specified in clauses (a) to (c) of sub-section (3) of Section 1 of the Code. (2) The civil and revenue Courts in Pondicherry are the only Courts which are established by the Central Government under clause (b) of Section 29, C.P.C. (3) A list of the countries and Courts in respect of which the Central Government have issued notifications under clause (c), Section 29, C P C is given in the Appendix to this part.

**97.**

Service of summons on residents in Pakistan is governed by the proviso to Rule 25, Order V, C.P.C.

**98.**

Under Section 87-B of the Code the Rulers of former Indian States notified as such by the Central Government cannot be sued in any Court or arrested under the Code except with the consent of the Central Government. The States so notified are given in the Appendix to this Part. [S.R.O 468 dated the 1st April, 1951]

**99.**

Subordinate Courts are in no circumstances to send processes of any kind for service to Consuls or Ambassadors or Diplomatic Agents, whether Indian or Foreign.

**100.**

Apart from the special cases provided for in Order V, Rules 25 and 26, subordinate Courts are not authorised by the Code to send processes for service direct to any Court outside India. (See Section 2S, Order V, Rules 21 and 23.) Note. - Unless special arrangement has been made between the two countries or the foreign country is known to be willing that its Courts should receive processes for service from Indian Courts direct, the only proper mode by which a Court in a foreign country can be addressed is by letter of request forwarded through the diplomatic channel. So far as service of processes is concerned the Code by the direction for service to be made by post upon the individual concerned (Order V, Rule 25) intends to obviate all unnecessary formality and all difficulties as to collection, etc. of costs of service.

**101.**

Where service is not to be effected by post under Rule 25 of Order V or by transmission to a Court under Rule 25 or 26 of Order V, subordinate Courts should adopt the mode of Letter of Request The letter should be addressed to the foreign Court in question, if known. If the appropriate Court is not known, the name may be left to be filled in afterwards. The letter should be forwarded through the High Court and State Government to the Government of India for transmission through the appropriate official channel.

**102.**

(1) All processes sent for service through official channels on individual resident in foreign countries, shall be forwarded through the High Court to the State Government for transmission to the Government of India for necessary action. (2) Such processes shall be accompanied by an explanation to the High Court of the reasons why the service is not made by post under Rule 20 of Order V.

Where in the opinion of the High Court no sufficient reason is disclosed the process shall be returned to the issuing Court and shall not be forwarded to Government. Such processes shall also be accompanied by a translation of all documents into the language of the foreign country within which the service is to be made.

### **103.**

All Courts when issuing process for service outside India should take care that the time fixed for appearance and the returnable date shall be such as to enable the process to be served and the person served to do what is required of him. This applies to all forms of process and to all modes of service.

## **Chapter V**

### **Production of Public Documents and Records**

### **104.**

(1) Attention is invited to Rule 10 of Order XIII which states the law as to the production of Court records. The principle laid down in sub-rule (2) of that rule may well be applied to other public records. (2) Affidavits under Order XIII, Rule 10 (2), setting forth the necessity for production of records should state not merely that they are to the suit, but must also show how the record is material and also that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy or in what way the production of the original is necessary.

### **105.**

Subject to any provision of the law to the contrary, the originals of public and municipal records should not be called for when duly authenticated and certified copies of the same are admissible in evidence and will serve the purpose for which the records are required. Note 1. - All Subordinate Courts should take special care to prevent the unnecessary production in Court of public documents as defined in Section 74 of the Indian Evidence Act, 1872, or documents forming part of public documents or in public custody. When such documents are called for, the Courts calling for them shall state the circumstances which render the production of the documents necessary. When, however, the Collector or other public officer in charge of the documents has been summoned under Order XVI, Rules 1 and 6 of the Civil Procedure Code, to produce in Court a certain document, it will be his duty to send it to the Court, but such officer may at the same time, in person or by letter addressed to the Court, object to the production of the document under Section 123 or Section 124 of the Indian Evidence Act, 1872 (I of 1872), stating the grounds of such objection. On an objection being made, it shall be the duty of the Court to consider and decide according to law if it should compel the production of such document. Note 2. - The attention of all Courts is drawn to the following Government Resolution No. 1538, dated the 13th May, 1891, regarding the production of post office records, issued by the Director-General of Post offices :- "A summons from a Court of civil or criminal jurisdiction to produce any of the records of a post office, or a certified extract from or copy

of any such records must be complied with. The receipt of such a summons, and such particulars as are known to the Postmaster regarding the case should be at once reported to the Postmaster General, in case he should see fit to raise any objection in Court under Section 123 or Section 124 of the Indian Evidence, 1872 (I of 1872), to the production of any of the records. When any journal or other records of a post office is produced in Court and admitted in evidence, the officer producing it should ask the Court to direct that only such portions of the records as may be required by the Court shall be disclosed."

## 106.

(1)When any public officer in charge of documents is summoned under Order XVI, Rules 1 and 6, to produce a certain document on record or when the Court has sent a requisition for a record from any Court or office under Order XIII, Rule 10, the document or record shall ordinarily be sent by registered post. If, however, owing to excessive weight or any other special reason the document or record cannot be sent by registered post, it should be sent by rail.(2)If the document to be sent is a State document of importance it may be sent with a special messenger if the officer incharge thereof considers such a course advisable.

## 107.

When any public document or a document in public custody has been produced in Court in compliance with a summons, and the officer from whose custody it has been produced desires its prompt return, the Court shall, after the document has been inspected or put in evidence, as the case may be, cause it to be returned with the least practicable delay to such officer, after the preparation of such copy as the Court may require under Order XIII, Rule 5 (2), unless its detention is considered to be necessary till the delivery of the judgement. The cost of preparing such a copy shall be borne by the party adducing the particular document as evidence.The High Court vide Memo No. 9340/HI-1-5/51, dated 7-8-59 prescribed that the documents in custody of Parliament or State legislature when required in evidence, a memo be addressed in the following form

:FormFrom,To,The Speaker of the House of the People/The Chairman of the Council of States, Parliament House, New Delhi/Speaker Vidhan Sabha, Bhopal.Dated the.....20Sub : (Description of the case)Sir,In the above proceeding, the plaintiff/defendant/complaint/accused proposes to rely upon the documents, specified in the annexure, which are in the custody of the House of the People/The Council of States/Legislative Assembly. I have to request you to move the House, if you have no objection, to grant leave for the production of documents in my Court and, if such leave is granted, to arrange to send the documents/certified copies of the documents so as to reach me on or before.....by registered post (A.D.) or through an officer in the Secretariat of the House.In the above proceeding, the plaint/defendant/complainant/accused proposes to examine.....an officer in the Secretariat of the House of People/The Council of States/Legislative Assembly/Legislative Council (or any duly informed officer in the Secretariat of the House) as a witness in regards to matters specified in the Annexure I have to request you to move the House, where oral evidence of an officer in the Secretariat of the House is required, if you have no objection to grant leave for the examination oi the said officer in my Court, and, if such leave is granted, to direct the officer to appear in my Court at 11 A.M. on.....Yours faithfully.

**108.**

When a record of a Civil Court is called for, except by superior judicial authority or by a Civil Court acting under Order XIII, Rule 10, the Court or officer calling for it shall state the circumstances which render its production necessary. The Judge may decline to forward it, if in his opinion no sufficient grounds are shown. It is improper and inconvenient that records of Courts of Justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers. The discretion vested in Courts by Order XIII, Rule 10 should be carefully exercised.

**109.**

(1) Requisitions made under the provisions of Order XIII, Rule 10, by subordinate Courts for the production of records of cases pertaining to, and in the custody of High Courts other than the High Court of Madhya Pradesh, or Courts subordinate to such other High Courts should be transmitted through the High Court of Madhya Pradesh, Jabalpur, and should be accompanied by a copy of the affidavit filed under Order XIII, Rule 10, together with a duly certified translation into English if such affidavit is not in English. (2) Requisitions for records by Courts not subordinate to the High Court of Madhya Pradesh shall be transmitted through the High Court of Madhya Pradesh, Jabalpur.

**110.**

Public documents or records no longer required are to be returned immediately. [Chapter V-A [Inserted by Notification No. C-2493-III-1-5-57-CH-20, dated 23-5-1995, Published in M.P. Rajpatra, Part I, dated 30-6-1995 at page 1021.] Production of other documents

**110A.**

When the defendant appears after service of summons and demands copy of documents which have been filed along with plaint, the Court shall pass proper order for supply of such document.

**110B.**

Whenever at any stage of the proceedings, any document is filed by either party then true copy thereof shall be supplied to other side.]

## **Chapter VI**

### **Guardians ad litem of minor defendants and respondents**

#### **A. - In Original Suits**

**111.**

In dealing with the appointment of a guardian ad litem of a minor defendant in original suits the attention of all subordinate Courts is drawn to Rules 3, 4 and 4-A of Order XXXII as amended by the High Court which runs as follows : "3. Guardian for the suit to be appointed by Court for minor defendant. - (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit of such minor. (2) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.

**4. Who may act as next friend or guardian for the suit. - (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:**

Provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff. (2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or as his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act in either capacity.

**4.**

-A. Procedure for appointment of guardian for the suit. - (1) No person, except the guardian appointed or declared by competent authority, shall without his consent, be appointed guardian for the suit. (2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. (3) Unless the Court is otherwise satisfied of the fact that the proposed guardian has no interest adverse to that of the minor in the matters in controversy in the suit and that he is a fit person to be so appointed, it shall require application to be supported by an affidavit verifying the fact. (4) No order shall be made on any application for the appointment as guardian for the suit of any person other than a guardian of the minor appointed or declared by competent authority, except upon notice to the proposed guardian for the suit and to any guardian of the minor appointed or declared by competent authority, or where there is no such guardian, the person in whose care the minor is, and after hearing any objection that may be urged on a day to be specified in the notice. The Court may, in any case, if it thinks fit, issue notice to the minor also. (5) Where on or before the specified day such proposed guardian fails to appear and express his consent to act as guardian for the suit, or where he is considered unfit or disqualified under sub-rule (3), the Court may in the absence of any other person fit and willing to act, appoint any of its ministerial officers, or a legal practitioner, to be guardian for the suit. If a legal practitioner is appointed guardian for the suit, the Court shall pass an order stating whether he is to conduct the case himself or engage another legal practitioner for the



purpose.(6)In any case in which there is a minor defendant, the Court may direct that a sufficient sum shall be deposited in Court by the plaintiff from which sum the expenses of the minor defendant in the suit including the expenses of a legal practitioner appointed guardian for the suit shall be paid. The cost so incurred by the plaintiff shall be adjusted in accordance with the final order passed in the suit in respect of costs".

## **112.**

The Court shall proceed to appoint a guardian ad litem after hearing any objection that may be urged by any of the persons served with a notice. Attention is invited to sub-rule (1) of Rule 4-A of Order XXXII above. If the proposed guardian does not appear and give his consent as required by law or if he appears to be unsuitable for any reason, or there is no other fit person willing to act as guardian ad litem the Court may appoint a Pleader ordinarily practising in the Court or other officer of the Court in the last resort, to be such guardian.Note 1. - As there are no special provisions in the Code regarding service of processes on minors, the rules applicable to adults must be followed when a notice is to be served on a minor.Note 2. - Summonses to major defendants, and notices to the persons referred to above should be issued simultaneously and in no case should issue of summonses to the former be deferred till the appointment of a guardian ad litem.Note 3. - When a pleader is appointed in a case where there are both major and minor defendants, the pleader who represents the former should ordinarily be appointed guardian ad litem of the latter unless the interest of the major defendant is adverse to that of the minor defendant or defendants.

## **113.**

(1)When a guardian ad litem is appointed and it appears to the Court that the guardian is not in possession of any, or sufficient funds or the conduct of the suit on behalf of the minor defendant and that the latter may be prejudiced in his defence thereby, the Court may direct that a sufficient sum shall be deposited in Court by the plaintiff from which sum the expenses of the minor defendant in the suit shall be paid. The expenses should include the legal fee or such sum as may be fixed by the Court to be paid to the pleader appointed on behalf of the minor. If the plaintiff fails to deposit the sum as directed, the appointment of the guardian may be cancelled and toe plaintiff's power to proceed with the suit will then be suspended, pending appointment of a fresh guardian. No remuneration can be allowed under toe Code to the person appointed guardian as such and toe Court should make this clear to every appointee before appointing him. But when a pleader is appointed guardian he may also be appointed to act as pleader for the minor in the suit and may receive remuneration in his latter capacity.(2)The guardian ad litem, shall at any time before the disposal of the suit, submit to toe Court his true account of expenses and of toe moneys received by him and the matter shall be adjusted in accordance with toe final order passed in the suit in respect of costs.

## **114.**

The guardian ad litem shall file his registered address as required by Order VIII, Rule 11, Civil Procedure Code.

**115.**

After the appointment of a guardian ad litem all processes in the suit or subsequent proceeding should be served on the guardian and not on the minor.B. - In Appeals

**116.**

The foregoing Rules 112 to 115 apply mutatis mutandis to the guardians of minor respondents.

## **Chapter VII**

### **Fixing of dates and adjournments**

**117.**

The attention of all Courts is directed to the provisions of Rule 6 of Order V and Rule 9 of Order XVI, Civil Procedure Code, when fixing dates for the appearance of persons summoned. Note 1. - Presiding Judge should personally fix the date of hearing after making an estimate of the time that each case may occupy, so as to ensure, so far as practicable, that the work fixed for a particular day will be done during the course of that day. In no case shall the work fixed for the day exceed what is necessary to make reasonably sure that the Court's time shall be fully occupied. Ordinarily this should not exceed by one-fourth the work that a Court can reasonably expect to finish. The work remaining over on any day should, as far as possible, be taken up on the next working day and given precedence over work of a similar nature. Note 2. - The responsibility for fixing the date is of the Judge alone. When, for any reason, a date is fixed in an entry in the order-sheet actually written by an official of the Court, it is the duty of the Judge to see that the date fixed is a proper one, having regard to the state of his file. If the Judge is absent it is his duty to see that any adjournments made during his absence were properly made and that proper dates were fixed. On the conscientious performance of this duty depends not only on the proper arrangements of the file but also the prevention of different treatment of litigants by the Court officials.

**118.**

(1) All matters preliminary to a trial should be settled before a date is fixed for trial. Neglect of rule may involve the re-opening of a case after the arguments have been heard. Preliminaries include the settlement of questions as to the addition of parties, amendment of plaint when it does not conform to the forms given in the Civil Procedure Code, the appointment of guardians ad litem of minor defendants, the discovery and inspection of documents and the production thereof, securing admissions as to facts and documents, the framing of issues, the execution of commissions for preparing essential maps or plans and the disposal of preliminary issues, if any. (2) On the completion of the interlocutory stage it will generally be convenient to fix an early date called the "settling date" for giving in lists of witnesses and paying the necessary process fee and expenses. On that date information should be obtained that will enable the probable length of trial to be

estimated, and a date or several consecutive dates should then be fixed for recording evidence. Note 1. - On the "settling date", the Court must insist on the parties taking all steps necessary to bring the case to trial, e.g., applying for commission for the examination of witnesses, requisitioning any further records and documents that may be required, filing a list of witnesses to whom the issue of summons is required together with necessary particulars to permit the service of summons, paying necessary process-fees and expenses, and, in cases where parties propose to produce witnesses and do not require the issue of summons, indicating the number of such witnesses so as to permit an estimate of the length of trial. Parties failing to take any such steps on the day or failing to avail themselves of the procedure for enforcing attendance of witnesses by summons, will do so at their own risk and any application for the purpose made at a later stage will not be granted as a matter of course. In particular the attention of the Courts is drawn to the consequences that may follow failure to pay process-fees and expenses on the "settling date", or in exceptional cases, on such near date as the Court may fix. The Court is bound to grant summons at any time before the date fixed for the examination of the witnesses and should afford all reasonable assistance in obtaining service, but if the summons is not served or is not received back the Court is not bound to grant an adjournment. Note 2. - The costs of producing witnesses or documents under Order XVI, Rule 1-A of the Code of Civil Procedure shall be costs in the cause.

## **119.**

(1) An unbroken block of a sufficient number of working days commencing from the first working day of each month should be allotted for the trial of regular suits each month. (2) The block should be reserved exclusively for evidence cases except that work of a minor character which does not claim much of the time and attention of the Judge may be fixed along with evidence cases.

## **120.**

Adjournment is a matter entirely in the discretion of the Court. Order XVII, Rule 1 (1). When an application for adjournment is made the Court must consider the interests of all parties and the particular circumstances of the case. It is the duty of a party to be ready with his witnesses on the day fixed; if witnesses are ill it is his duty to apply before that day for a commission. To adjourn a case partly heard encourages many undesirable practices. It is to be regarded as a very undesirable thing and is only to be resorted to when justice demands it. Laxity or want of firmness in the matter of adjournments, especially in cases fixed for evidence, causes a serious waste of time of the Court and much inconvenience and expense to suitors and witnesses, especially to those whose means are limited and who cannot afford the frequent loss of a day's earnings by attendance at the Courts. In every case the Judge should record in the order-sheet the reasons for the adjournment. It is no ground for an adjournment that another civil case, the hearing of which has not begun, is fixed for the next day.

## **121.**

(1) A party has no right to an adjournment in any event and should not be given an adjournment merely to suit his own convenience, or because his pleader is absent (though in such a case, time for

an hour or so should, if possible, be given), or because he is not ready to go on with the case, or because he has neglected to obtain copies of documents which he ought to have procured beforehand. When an adjournment is asked for on the ground that the applicant has to obtain certified copies of certain documents, the Judge should ordinarily require a written application supported by reasons and accompanied by an affidavit indicating that the applicant has not hitherto been guilty of undue delay in applying for copies and that he has not already got such copies in his possession. If the application is granted all costs of production and proof should be thrown on the applicant. It should be realized that it is not necessary to adjourn a case even when it appears necessary to give a party an opportunity to produce additional evidence, oral or written. The correct course, in the absence of any exceptional circumstances, is as follows : (i) conclude the hearing of evidence available; (ii) take a note of the facts which the additional evidence is to prove. If the party cannot say that the evidence is to prove, decline adjournment; (iii) conclude the hearing of arguments; (iv) at the later adjourned stage receive and consider the additional evidence restricting it to the facts noted in (ii). Such evidence, unless of a kind that cannot be tampered with, should not be given the same weight as evidence given at the time of the trial. Note. - The attention of the Courts is drawn to the High Court amendment to Order XVIII, Rule 2, C.P.C. adding the following sub-rule (4) (vide M.P. Rajpatra, dated 16-9-60) : "Notwithstanding anything contained in this rule, the Court may order that the production of evidence or the address to the Court may be in any order which is may deem fit." (2) A party has no right to an adjournment merely because witnesses have not appeared more particularly if their non-appearance can be attributed to his own default in securing timely issue of summons. If due to delay in obtaining issue of summons It appears unlikely that service can be affected in the ordinary routine of the process-serving establishment the party must pay for a separate process special and, if necessary, furnish an identifier or take his chance of the summons not being served in time. Note 1. - The attention of the Courts is directed to the provisions of Order XVI, Rule 10 (2), which requires that, before issue of a proclamation or warrant, the Court should see reason to believe that the evidence of the absent witness is material. Note 2. - An appreciable improvement in the matter of unnecessary adjournments of cases is possible if the Courts, instead of merely adjourning cases for non-service and late service, take an intelligent interest in the work and, by properly scrutinizing the registers of the process-writer and Nazir, the work-tickets and the reports themselves, find out whether the default is due to the negligence of deliberate intention of the parties or to the negligence of clerks or process-servers. In either case suitable action should be at once taken to deal with these malpractices so as to prevent their recurrence. (3) A party has no right to an adjournment merely because he has filed a petition for revision and has applied or intended to apply to the High Court for stay. The automatic grant of adjournments in such cases encourages the filing of petitions for revision of interlocutory orders solely for purposes of delay. Adjournments in such cases should be granted only when the Judge considers that adjournment is beneficial.

## 122.

The responsibility of parties for doing all that lies in their power to secure due service of summonses on their witnesses should be enforced. Where the date for attendance is more than 30 days ahead of settling date it should be regarded as the duty of a party to move the Court promptly by a suitable application whenever a summons has been returned without due service. The District Judge should

see that in each Court facilities are afforded for ascertaining what processes have been returned unserved; to this end the exhibition of a list of such processes is desirable.

### **123.**

A pleader who desires an adjournment on personal grounds is bound to apply for it a reasonable time beforehand. If the adjournment is refused his professional duty requires him to arrange so far as he possibly can do so, that his client is represented on the day appointed in such a way that the case can proceed.

### **124.**

Some Courts are inclined to grant adjournment merely because the party applying is prepared to pay costs or because the opposite party does not oppose adjournment. Courts should bear in mind that the offer of costs or the fact that both parties are willing to get an adjournment is not itself a sufficient ground for an adjournment.

### **125.**

(1) A party who desires an adjournment may give notice in writing to the other party or his pleader, of his intention to apply therefor in sufficient time before date fixed for hearing. (2) A party who desires that the hearing may be advanced may apply therefor by interlocutory application, of which timely notice shall be given to the other party or his pleader. (3) The party served may give to the other party or his pleader notice in writing that he consents to or will oppose such adjournment or advancement. Note. - If a party is represented by a pleader, the notice should be served on the pleader; in other cases it should be served on the party at his registered address. (4) On the day appointed for hearing of such application the Court will pass necessary orders granting or refusing the adjournment or advancement.

### **126.**

(1) Arguments should be heard immediately after the evidence closes, and a case, unless it is long and complicated, should not, as a rule, be adjourned for arguments after all evidence has been adduced. If any adjournment is necessary, reasons, should be recorded by the presiding Judge and it should never be for any but a very brief period. (2) Arguments should not, except for good reasons, be heard piecemeal and where it is found necessary to adjourn a case for the hearing of further arguments, the adjournment should ordinarily be to the next working day. A case once closed and adjourned for arguments should never be re-opened by allowing parties to produce evidence unless for good cause clearly established to the satisfaction of the Court and recorded. Such a re-opening should be very rarely allowed.

## **127.**

(1) Courts when asked for an adjournment with a view to effect a compromise should exercise their discretion with caution. An adjournment should not, as a rule, be granted unless the Court has reason to believe that there is every likelihood of a compromise being effected. (2) If an adjournment with a view to compromise is granted on a date fixed for evidence, the Court should take particular care to see that the witnesses in attendance are not discharged, but are directed for the next hearing. This would avoid an unnecessary further adjournment for re-summoning the witnesses and will enable the parties to proceed with their evidence in case the parties fail to come to terms. Repeated adjournments to allow compromise should not be granted. It is preferable to grant plenty of time for negotiations and make the adjournment final.

## **128.**

Cases should ordinarily be taken up in the order in which they are entered in the judicial diary, but contested cases should be left over till uncontested cases have been dealt with. Precedence should be given to cases which have already been adjourned or in which no evidence is to be recorded. It should seldom be necessary to grant adjournments in uncontested cases other than for the production of formal evidence or to allow of a compromise.

## **129.**

Except where an adjournment is granted with the consent of all parties concerned, or where from insufficiency of notice, a party has not had reasonable time to prepare himself, or where an adjournment is necessitated by the business of the Court or the declaration of a holiday or an order to discontinue work for the day, by the act or default of any other party, the party desiring an adjournment should be ordered to pay the costs thereof. Note. - Court-fee paid on petitions for adjournment should not form part of the taxed costs of the suit or proceeding.

## **130.**

Adjournment costs awarded against a party should be commensurate with the pecuniary loss to which the other party is put and not merely a nominal sum. They should include expenses (if any;) re-summoning the witnesses and a reasonable fee should also be allowed for the advocate or pleader engaged.

## **131.**

(1) Where adjournment costs, compensatory costs or any other costs are ordered to be paid as a condition precedent to the next or further hearing or the revival of a case, or the participation of a party in the proceedings, etc., the order should indicate the amount ordered and what part is (a) to recompense the party for expenses likely to be or in fact incurred (other than to his pleader) or loss sustained, (b) to recompense that party's pleader for dislocation of his work. Payment of the amount

ordered to the pleader of the party in whose favour such order is made, will be a sufficient compliance with the order, but it shall be the duty of the pleader to file in Court, as early as possible, a proper receipt showing that the money received by him has been paid by him to his clients to the extent ordered for purpose (a) above the Court should in all cases insist on the filing of such receipt. Note 1. - In the case of illiterate clients, the receipt shall be endorsed with their thumb impression. Note 2. - While the amount ordered as recompense to the party's leader may lawfully be retained by such pleader the practice has grown up whereby such sums are diverted to the local Bar Library. This practice is recommended but it is a matter for the pleader himself whether he follows it. Note 3. - A pleader failing to file the receipt required by this rule shall deposit into Court the costs received or withdrawn by him. (2) Whenever a person to whom costs of any kind are ordered to be paid as aforesaid, or his agent, or a representative who in the opinion of the Court is competent to receive payment, is present in Court, the money may conveniently be paid direct to the person so entitled or the said agent or representative in open Court and an acknowledgment of receipt obtained forthwith from the person on the order-sheet, the fact being noted by the presiding Judge in the record of the case. Note 1. While the Courts have full liberty to exercise their discretion in each individual case, the High Court considers that, in the case absence of special circumstances, and when the costs allowed as aforesaid do not exceed rupees five it is reasonable that the party desiring the adjournment should come prepared to compensate his opponent for the inconvenience or loss to which he is put, and that the Court will be justified in making the adjournment conditional on the money being paid then and there. In suitable cases, however, the Court may make the next or further hearing of the case on the adjourned date conditional upon the payment of the costs awarded, on or before that date. Note 2. - Where adjournment or other such cost have been paid into Court, the fact of such payment should be noted in the order-sheet. It will thus be possible to see from the order-sheet what sum, if any, still remains unpaid, all such costs remaining unpaid shall be entered in the decree as costs in favour of the party entitled to them and set off against the amount, if any, payable by him to the other party under the decree, [Order XX, Rule 6 (3)]. Note 3. - Adjournment costs are intended to recoup a party's opponent for the expenses occasioned or loss sustained by the adjournment and, therefore, when a party paying the adjournment costs eventually succeeds in the case, the party to whom costs were awarded should not be made to refund them by inclusion in the other costs that may be awarded against him in the case.

## 132.

If at any time before the date fixed for final disposal or for evidence the presiding Judge of the Court, by reason of his having to be absent, on leave or for some other contingency, finds that he will not be able to take up the case on that date, the case should be adjourned and the pleaders concerned should be given as early an intimation as possible to enable them to inform their clients that they will not be required to attend on that date with their witnesses. This rule should be rigorously observed. It is very wrong to cause litigants the loss and trouble of coming to Court for no purpose. It is also grossly discourteous.

**133.**

Particular attention is called to the proviso to Rule 1 of the Order XVII. This contains a mandatory provision of law that the recording of evidence must be continued from day to day until all the witnesses in attendance have been examined, unless an adjournment on the following day is found necessary, in which case specific reasons must be recorded in the order-sheet. The High Court attaches great importance to compliance with this rule and District Judges should be vigilant to see that it is being followed and to check any departure from it. Note. - The fact that another case or other cases are fixed for the following day is not a sufficient reason for adjournment to a day beyond the following day. The other cases should be adjourned. The practice of making an ostensible compliance with the rule requiring the taking up of an evidence case from day to day by devoting only a small portion of each day to the matter is objectionable. No. 10620-III-I-5-57, dated 26-10-1961, Published in M.P. Rajpatra Part IV (Ga), dated 10-11-1961 at page 942. - In exercise of the powers conferred by Article 227 of the Constitution of India, read with Section 23 of the Madhya Pradesh Civil Courts Act, 1958 and all other powers enabling, and in supersession of the existing rules in force in Civil Courts in any part of the Madhya Pradesh on the concerned subject, following Rules relating Preparation for Trial, Framing of Issues and Recording of Evidence judgement, Decrees and Costs, Execution of Decrees, Commissions, Incidental Proceedings and Appeals and Remands have, with the previous approval of the Governor, been made by the High Court of Madhya Pradesh, Jabalpur, and were published for general information.

**2. These rules shall come into force from the 1st January, 1962.****Chapter VIII****Preparation for trial, framing of issues and recording of evidence****1. General****134.**

If the presiding Judge, directing registration of a plaint, sees good grounds for requiring the defendant to put a written statement under Rule 1 of Order VIII, Civil Procedure Code, a note should be added to the summons issued to him, ordering him to present a written statement on or before the date fixed for the first hearing.

**135.**

The attention of all Courts is drawn to Rule 9, Order VIII, under which no pleadings subsequently to the written statement of the defendant other than by way of defence to a set-off, shall be presented except with the leave of the Court. The leave should be granted only where the written statement for which leave is sought contains a confession and avoidance not involving a departure. In every other



case the parties will be at issue and alterations in the pleadings should be by way of amendment or further particulars only.

### **136.**

Normally it is for a party to apply for further and better particulars under Order VI, Rule 5, but in suitable cases the Court may order particulars suo motu to ensure a fair trial.

### **137.**

Whenever a direction to any party to file a written statement on or before a particular date is disobeyed, the provisions contained in Rule 10, Order VIII, should be enforced against the party in any case where it is applicable. In other cases substantial costs as a rule should be ordered to be paid.

### **138.**

(1)The attention of presiding Judges is directed to the provisions of Rule 1, Order X which are rarely observed. If the allegations of fact made in the plaint or written statement are not admitted or denied in the pleadings, either expressly or by clear implication, the Court should at the first hearing proceed to question the party or his pleader and record categorically his admission or denial of those allegations.(2)Order X, Rule 2, empowered the Court at the first or any subsequent hearing to examine any party appearing in person or present in Court, or any person by whom the party or his pleader is accompanied and who is able to answer material questions. This does not include a pleader but does include a person having knowledge of material facts who accompanies the pleader. This power (under Order X, Rule 2) is intended to be used by the Judge only when he finds it necessary to obtain from such party information on any material question. It is not intended as a substitute for pleadings or as a substitute for trial.(3)Examination of the parties Order X, Rule 2, is intended to assist in settling the issue, not a mode of modifying pleadings. It should normally only be necessary in which illiterate litigants are concerned whose defective instructions have resulted in vague and irrelevant allegations in the pleadings. If irrelevant and scandalous allegations are made in pleadings they may be struck out but normally pleadings should only be amended on application made.

### **139.**

Documentary evidence may be conveniently grouped into three classes representing as many stages in the progress of the suit-Class I. - Document upon which the plaintiff sues or relies.Class II. - Documents which should be produced at the first hearing.Class III. - Documents which become relevant during the course of the trial e.g., previous statements put into contradict witnesses, documents handed to a witness to refresh his memory, etc.

**140.**

In dealing with documents of class I in Rule 138, the attention of Court is drawn to the mandatory provisions of Order VII, Rules 14 and 15. The penalty for failure to comply with these provisions is contained in Rule 18 of the Order. The leave required by Rule 18 (1) of Order VII should not be given as a matter of course and the grant of such leave should be specifically recorded in the order-sheet. Note. - A certified copy of a public documents should, for the purpose of Order VII, Rule 14, be regarded as in the power of a person entitled to obtain such a copy.

**141.**

In dealing with the documents of class II in Rule 138, the attention of the Courts is drawn to the provisions of Order VIII, Rule 1. This rule makes it incumbent on the parties to produce at the first hearing all documentary evidence of every description in their possession or power on which they intend to rely. Order XIII, Rule 2, provides that documents which ought so to have been produced but have not been produced shall not be received at any future stage unless good cause is shown for their non-production at the appointed time and further requires that the Court shall record its reasons for receiving such documents. The Court should, therefore, formally call on the parties to produce their documents and lists and should make a note in the order-sheet of having done so and that the parties in reply produced the documents entered in a certain list or stated distinctly that they had nothing to produce. Note 1. - A list of reliance, if any, has to be filed by the plaintiff at the time of filing the plaint and may be filed by the defendant at the time of filing the written statement. A "list of reliance" filed by the plaintiff at any other time, or by the defendant, does not exclude the party filing it from the obligation under Rule 2 of Order XIII, of showing good cause of the non-production of the documents included in the list at the appropriate time. Note 2. - Rule 2 of Order XIII applies to all kinds of documentary evidence, whether consisting of original documents or certified copies of public documents. If a party wishes to produce later certified copies which he has not yet obtained his intention should invariably be announced at the first hearing. He should then be required to specify the originals and the details should be recorded in the order-sheet. A certified copy should not ordinarily be received after the first hearing unless the tenderer shows he has exercised reasonable diligence in applying for and obtaining it and the Court must record its reasons under Rule 2 of Order XIII for receiving it. Note 3. - These instructions do not apply to documents which only become relevant during the course of the trial.

**142.**

Where it appears to the Court that documentary evidence will play an important part in the decision, both parties should, with due regard to the proviso to Order XI, Rule 12, be directed to file affidavits of documents under Order XI, Rules 12 and 13 of the Code. Ten days should ordinarily be sufficient for the purpose. In this connection, the attention of presiding Judges is directed to Rule 21 of Order XI which lays down that where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended. This rigorous power should be employed with due

regard to the backward state of certain litigants; but this regard should not paralyze the power but soften its application by giving an opportunity to the party in default to put the matter right by a given date.

### 143.

(1)The provisions of Orders XI and XII, Civil Procedure Code, relating to "discovery and inspection" and "admission" were introduced into the Code of 1908 to save both time and expense and to shorten litigation by preparation of cases before trial. But these valuable provisions are found to be rarely, if ever, used, with the result that not only are suits protracted beyond all reasonable length arid costs needlessly sacrificed but no real progress with the case is made at all before it comes on for hearing. The importance and necessity of a systematic use of these provisions cannot be too strongly insisted on. The machinery of discovery, inspection, etc., if properly understood and utilized, settles many side issues and a quantity of controversial matter and extracts from either side all the documents that have any bearing on the cases that are or were in its possession at an early stage of the suit, so that cases come up fully prepared for trial and their duration is shortened.(2)Presiding Judges must make themselves thoroughly conversant with the rules relating to discovery, inspection, etc., and the High Court desires it to be understood that definite and systematic attempts should be made to apply them in all suitable cases. Presiding Judges should try to persuade parties and their pleaders to make proper admissions and to make full use of these provisions of Code and in suitable cases should themselves take the initiative in introducing and applying these rules. By an intelligent and judicious use of the provisions of Section 30, Civil Procedure Code, it should be possible for presiding Judges to initiate a systematic practice as regards the preparation of a case for trial and presiding Judges must regard it as part of their ordinary duty to act suo motu under Section 30, Civil Procedure Code, in suitable cases even when parties or counsel fail to do so.(3)In this connection the attention of presiding Judges is invited to the provisions of Order XII, Rules 2 and 4 of the Civil Procedure Code, of which use should be made on all appropriate occasions. These rules contain a mandatory provision that when a notice to admit (a) documents (Order XXI, Rule 2); or (b) facts (Order XII, Rule 4) has been served and the person so called upon has refused or neglected to admit, the subsequent costs of proving the documents or facts should be ordered to be paid by the party so neglecting or refusing if it appears that they should have been admitted, whatever the result of the suit may be; and further that no costs of proving the documents should be allowed unless notice to admit has been given to the opposite party except where the omission is, in the opinion of the Court, a saving of time. It is the duty of the presiding Judges to check, when signing decrees, that the above provisions of law have been given effect to in taxing costs.(4)Particular attention is drawn to the new and important Rule 3A of Order XU, C.P.C. empowering the Court to call upon any party to admit any document and record admission, refusal or negligence.Note. - In forming an estimate of the merit and general efficiency of officers their ability to make a systematic and intelligent use of these rules will be taken into consideration and the District Judge should, in his inspection, record whether the provisions referred to are being systematically and effectually made use of.

## 2. Issues

### 144.

(1) Issue should be framed on the date fixed for the purpose by the presiding Judge himself after reading the plaint and the written statement and other pleadings, if any, and after such examination of the parties or their pleaders (Order X, Rule 1) as may appear necessary. It may also be necessary to look at the documents produced by either party or ordered to be produced (Order XIV, Rules 1 and 3). Answers to interrogatories, if any, should be pursued [Order XIV, Rule 3 (b)]. Agreed issues should be encouraged but the mere fact that issues are agreed does not absolve the Court from the duty to consider and settle them. The Court should, however, be slow to interfere with agreed issues. (2) The correct decision of a suit depends to a large extent on the correct determination of the points in controversy and the utmost care and attention is, therefore, needed in ascertaining the real matters-in dispute and in fixing the issues in precise terms. It should be observed that the party is to produce evidence "in support of the issues he is to prove" (Order XVIII, Rules 2 and 3) and that the Court shall state its findings on the issues (Order XX, Rule 5, Civil Procedure Code).

### 145.

(1) In framing issues the Court shall proceed as follows : (a) Every material proposition of fact and every proposition of law which is affirmed by the one side and denied by the other, shall be made the subject of separate issue. (b) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies. (c) Every issue of law shall be so framed as to indicate the precise question of law to be decided. Note. - When the claim or any portion of it is alleged to be barred by any law, the issue shall also state the Act and section or rule or other authority under which it is so barred. (d) When the question is whether a certain section of law applies, the issue should be framed in the words of that section, e.g., if the question is whether a transfer should be set aside under Section 64 of the Provincial Insolvency Act, the issue should not be "Is the transfer bogus and fraudulent?" (e) Issues should be self-contained. An issue "Is the sale liable to be set aside for the reasons stated by the defendant in his written statement, dated....." is to be avoided. (f) Every issue should form a single question and as far as possible should not be put in an alternative form. (g) No proposition of fact which is not itself a material proposition but is relevant only as tending to prove a material proposition, shall be made the subject of an issue. (h) No question regarding admissibility of evidence shall be made the subject of an issue. (2) When the Court is of opinion that there are issues of law going to the root of a case, it may raise such issues as preliminary issues before setting further issues and try them first (Order XIV, Rule 2). The provisions of Order XV, Rule 3, should also be applied in suitable cases. Issues regarding valuation of suit and similar issues must be disposed of at a very early stage of the suit without keeping them for trial along with the other issues affecting the merits of the case.

## 3. Recording of Evidence

**146.**

(1)The provisions of Order XVIII, Rule 2, Civil Procedure Code, regarding the opening of a case are often ignored. It is essential that these provisions should be strictly followed, i.e., the evidence of each side should be preceded by a terse but complete statement of the case to be made out, showing the exact nature of the claim, the facts to be established by the evidence which will be adduced, the general character and bearing of that evidence and a clear statement of any proposition of law involved. The fact of the opening of the case should be noted in the order-sheet.(2)The case stated by the. pleader in his "opening" must be in accordance with the party's pleadings, for no litigant can be allowed to make at the trial a case different from that which he has placed on record on which his adversary is prepared to meet. The failure of a party to open his case, and to state exactly the line which he proposes to take, provides an opportunity to him to change the case which he originally had in mind and to call not only the witnesses whom he had originally intended to call, but other witnesses on different points to support a different case, if he sees that the case which he had in his mind is not progressing as satisfactorily as he desires.(3)When the party having the right to begin has stated his case and the witnesses adduced by him have been examined, cross-examined and re-examined, and the documents tendered by him have been either admitted in evidence or rejected, the opposite party, or each of the opposing parties having a distinct case, should state their respective cases succession if they desire to do so, and then produce their evidence.

**147.**

(1)Depositions should be recorded on the printed forms supplied. It is a convenience to appellate Courts if lengthy depositions are divided into numbered paragraphs. When a deposition cannot be completed in one sheet, the printed forms for the continuation of deposition should be used for all sheets after the first, each such sheet being marked in the right hand top corner with a number denoting its order in the deposition; thus the first continuation sheet will be marked "2", the second "3" and so on. The deposition of each witness should be recorded on a separate sheet and in the manner prescribed in Order XVIII of the Civil Procedure Code. It is illegal and improper to record the deposition of one witness at length and to enter against the names of other witnesses "state as above". Deposition should be recorded in the first person.(2)The headings, both of deposition sheets and of continuation sheets, are invariably to be filled up by the presiding officer himself. In the former, the word "oath" will be substituted when required for "affirmation". The age of the witness stated in the heading will be estimated by the presiding officer, if the witness does not appear to be able to state his own age correctly. If, for any special reason, it is necessary to record as such, the witness's own statement as to his age, it will be recorded in the body of the deposition. The particulars as to the name, parentage, residence and occupation of the witness are a part of the deposition itself, and are not to be recorded till the oath or affirmation has been administered. The statement as to the occupation of the witness is to be recorded with precision, e.g., "servant" is not a sufficient description, it should appear what sort of servant the witness is. Where the witness is a married woman, her husband's name should be recorded instead of her father's.Note 1.-The name of an European witness should be recorded in full. It is not necessary to record his father's name, and in the case of well known official the age may be omitted from the heading.Note 2.-Except where it is relevant for the purpose of legal proceedings a witness should not be asked to reveal his caste as a

matter of course. It will, however, be open to the Court of elicit the information in respect of a particular witness if the circumstances so justify.(3)When the use of words or phrases not used in Hindi or English is unavoidable, the nearest equivalent of the language of the deposition should be added in brackets (except in the case of technical, revenue or law terms) so as to clarify in what sense the lower Court is using that term. Similarly, where the dates are not according to a widely understood calendar, the equivalent dates of National Calendar should be given in brackets.(4)Each deposition should be signed (not merely initialled) by the presiding officer, who should add to his signature at least the initials indicating his official designation, so that the deposition may be complete in itself. He shall also sign a certificate at the foot of each deposition to the effect that it has been read over or interpreted to the witness, in the Judge's presence.Note. - The provisions of Order XVII, Rules 5 and 6, Civil Procedure Code, as regards the reading over the interpretation of evidence to witnesses in the presence of the Judge are frequently overlooked. These provisions of law should be strictly followed.(5)It is important that the whole of the evidence given by each witness should appear in one place, and not scattered at intervals through the record. Therefore when a witness is, for any reason, recalled and further examined after the close of his original deposition, such further examination should appear as a continuation of the original deposition, being headed as follows, for the sake of distinction."Recalled for further examination on this (here enter the date) after the (here show the stage of the proceedings immediately preceding the recall of the witness, e.g., if the first witness for the plaintiff is recalled after the tenth, the entry would be 10th witness for the plaintiff)"-(6)Care should be taken to make deposition as little confusing as possible. In particular different words or phrases should not be used in different parts of the deposition to describe the same objects and documents. A person should be referred to in a consistent manner, e.g., he should not be referred to by his family name at one place and by his personal name at another.

#### **148.**

The attention of Courts is drawn to the provisions of Order XVIII, Rule 4, that witnesses are to be examined in open Court. The power under Section 30 (c) (and see Order XIX, Rule 1) to order any particular fact or facts to be proved by affidavit or the reading of an affidavit of any witness at the hearing, should be exercised only in special circumstances, or, as that rule declares "for sufficient reason", which should always be specified in the order; there can be no general order for the admission of affidavits in suits oi appeals.

#### **149.**

A judge may use a type-writer for the purpose of recording deposition or memoranda of evidence, but each page of such deposition or memorandum of evidence so recorded should be signed by the Judge.

#### **150.**

The imperative language used in Sections 5, 60, 64, 136 and 165, Evidence Act, indicates that a Court should, whether objection to evidence if or is not raised by any party, compel observance of the law. It is, therefore, the duty of the Judge to ascertain by a few questions put to each witness at

the proper time, whether he is speaking of matters within his own knowledge, or merely of those which he has heard from others; and if the former, what are the means of knowledge. Under Section 165 of the Evidence Act the Judge may, in order to discover or to obtain proper proof of facts question a witness at any time about any fact, relevant or irrelevant, but he should not ordinarily interfere after the examination-in-chief has been finished and question the witness upon points to which the cross-examination will properly be directed, as to do so may tender the subsequent cross-examination ineffective.(2)When a witness is being cross-examined, the Judge should guide himself by the provisions of Sections 146, 148,151 and 152 of the Evidence Act, and disallow any question which appears to him to be improper. He should see that much is not made of trifling discrepancies, that the examination is not protracted beyond reasonable limits even if the questions put be logically relevant, and that the witness is not subject to questions which merely invite repetition of the story which he has already given in his examination-in-chief in the hope that he will change it in the repetition. In this connection Section 136 of the Evidence Act should be borne in mind, as it empowers the Judge to ask a party proposing to give evidence in what manner the alleged fact, if proved, will be relevant. The cross-examiner must not be allowed to bully or take unfair advantage of the witness. Use should be made of the disciplinary power conferred by Section 150 when its exercise appears to be called for.(3)While it is necessary for the Judge to check random and pointless questioning he should be careful not to frustrate a skilful cross-examination by interposing when the draft of the questions is not immediately apparent and some questions are repeated. He should endeavour to follow the line and purpose of the cross-examination closely and should only ask the examiner to explain relevancy of a line of enquiry when it obviously possesses no point or bearing upon the case.(4)A witness may be questioned in cross-examination not only on the subject of enquiry but upon any other subject, however remote, for the purpose of testing the credibility, his memory, his means of knowledge, or his accuracy. The moment it appears that a question is being asked which does not bear upon the issue or give promise of helping the Court or to estimate the value of the witness's testimony, it is the duty of the Court to interfere as well as to protect the witness from what then become an injustice or insult so as to prevent the time of the Court from being wasted. The Court should also prevent any evidence being given to contradict a witness in contravention of Section 153 of the Evidence Act.

## **Chapter IX**

### **Judgement, decree and costs**

#### **1. judgement**

##### **151.**

The attention of the Courts is drawn to the provisions of the Order XX, Rules 1 and 5, and Section 33, Civil Procedure Code, regarding the preparation and pronouncement of judgements. The Courts will also be guided by the instructions in the following rules.

**152.**

judgements should be typed or written legibly on half sheets of foolscap paper, a margin of one-third of each sheet being left blank to the left on the front and to the right on the reverse. Each judgement should be divided into numbered paragraphs. The use of letters instead of numerals in indicating paragraphs, the division of paragraphs into sub-paragraphs and excessive length of paragraphs should be avoided. If a judgement is typed each page thereof shall be signed by the Judge. Note. - The practice of writing judgement or part of judgement on any kind of proper and sometimes even on scraps of paper is strongly deprecated by the High Court.

**153.**

judgements shall be dated and signed by the Judge in open Court at the time or pronouncing them (Order XX, Rule 3, Civil Procedure Code). The practice of writing the judgement after deciding the case by an oral judgement is not sanctioned by the code and must not be resorted to. judgements must always bear the date on which they are delivered and signed in Court.

**154.**

(1)The object of a judgement is to set out in as lucid a form as possible the nature of the dispute and the circumstances necessary to understand it, the case put forward by each side with their allegations in support of it, the points on which they are at issue, the marshalling and discussion of the evidence or law on each point, and a clear and unambiguous decision point by point till the dispute is decided in all aspects raised. A person reading the judgement should thus know what the case is about, what the parties said about it, the points on which they were in conflict, and what the Judge decide on every question raised.(2)The form of a judgement must be such as to carry out this object. The form may vary, but ordinarily follow the rules given below.(3)A judgement or order should be divided into consecutively numbered paragraphs of a reasonable length not exceeding three quarters of a page as a rule, so that reference made in argument before a higher Court can easily be found. The opening paragraph should state briefly what the nature of the action is, so that it can be gathered from the start what the judgement is about and what points are to be looked for. The next paragraph or two should give tire admitted facts, that is, facts which neither side disputes, insofar as they are necessary to understand the case.(4)Next should follow the case for the plaintiff, and after this the case for the defendant. Where there are several defendants putting forward different cases it may be necessary to put the plaintiffs case against each defendant separately along with that of defendant's answer to it. There is no hard and fast rule except that allegations and counter allegations must be strictly differentiated from admitted facts and kept apart from them, and must be expressed in such a way that a person reading the judgement can see what plaintiff said and what the defendant replied. The case for each side should be comprehensively summarized, not merely copied down in abbreviated form. It is not uncommon to see the incorrect form. "The plaintiff alleged that..... That.....; etc." This is copying the plaint, in abbreviated form instead of taking the trouble to state the case.Note. - All that Rule 4 (2) of Order XX requires is that in a judgement the case should be stated in few words so as to bring out its nature. It is not necessary to reproduce the pleadings which are available in the record for reference by any higher



tribunal.(5)Next come the issue. If the allegations are set out properly the issues will be obvious before they are explicitly stated. The subject of an issue is to lie down the evidence and arguments and decision to a particular question so that there may be not doubt what the dispute is and how it has been decided.(6)An issue may involve several points. For instance, if the question is whether debts were incurred for immoral purpose it may be necessary to decide the particular immoral purpose and immoral application of each loan, the date and the circumstances under which it was borrowed, and so on. As far as possible each point that arises for decision should be taken consecutively, the evidence for and against marshalled, where necessary, the law considered and the arguments on each side, and then the decision on the point given. Each point should have a paragraph or more itself. When all the points supposing there are more than one relating to a particular issue have been considered and decided, a finding on the issue as a whole should be given.(7)It is essential to give a definite finding on every point and every issue so that a higher Court may know what the decision was and not find itself faced with ambiguities.(8)After all the issues have been dealt with comes the decision of the case. Where it is necessary to give particular directions as to debts, costs, action to be taken, etc., they should be clearly given so that the decree may be properly drawn up and there may be not argument as to what the Court really ordered to be done.(9)A point that is obvious and undisputed should not be laboured.(10)Genealogical trees should be set out as clearly as possible and where in introducing a case it is necessary to name a number of people of to state their relationship particular care should be taken in making the relationship clear and showing what the persons named have to do with the case. It is not a rare thing to find judgements beginning with such a sentence as this : X and Y own adjoining fields, without saying who X and are, or how it matters whether they own any fields or not This kind of beginning, expressed here in its simplest form, leads to severe difficulties where it assumes as it often does a more complicated form.(11)The marshalling of evidence is not the repetition of what a witness said but the critical grouping together of the relevant statements of particular witnesses for and against a particular fact. The proper way to marshal evidence is something like this; that A, B and C agree m such and such a version but are contradicted on such and such points by D and E, that a contrary version (being such and such) given by X and Y unsupported such and such details by Z, is against the probabilities or against such and such established facts; therefore the version of A, B and C, with such and such modifications, appears to be correct.(12)The judgement should not be begun until the Judge has it clear in his own mind what points he is to decide, how he is going to decide them and why. He should try to deal with them as lucidly and concisely as possible. A prolix judgement is not a sign of carefulness but of inability to come to the point. It is a Judge's duty not to write a page where a few lines would have sufficed.(13)A judgement is unlikely to be lucid throughout unless the Judge carefully reads it over afterwards and corrects it where necessary before signing it.

## 155.

(1)When issues are framed the Court must record its findings or decision, with its reasons therefore, separately on each issue which needs division (Order XX, Rule 5). It is not sufficient to record "I find the issue in favour of the plaintiff" or "I find the issue proved", as is sometimes done. Such findings are often ambiguous and may sometimes be entirely misleading. Similarly, when issues are framed in the negative, the findings thereon should always be expressed fully in the form "Defendant did (or

did not) receive consideration." "The transaction was (or was not fraudulent)". He is (or is not) liable", etc. In any case the finding must be in plain and distinct terms. When two or more issues are so intermixed or interdependent that there is distinct advantages in taking them up together, they may be so taken up. In the judgement the findings should be recorded immediately opposite the corresponding issues. Note 1. - This also applies to appellate judgements in appeal cases in which issues have been framed. Note 2. - All the issues should be dealt with. It is not enough to dispose of what the trial or appellate Court regards as a vital issue another Court may arrive at a different conclusion on that issue and then in the absence of findings on the other issues, a remand becomes necessary causing great delay. (2) The use of non-technical words or phrases foreign to the language of the judgement should be avoided as far as possible. If such use is unavoidable the nearest equivalent in the language of the judgement should be added in the brackets. Similarly, when referring to uncommon dates occurring in a document or a deposition the dates according to national calendar should be given in brackets. (3) Witnesses should be described in the judgement not merely by their numbers but by their names. The names need not, however, be given, on each occasion of reference, at full length, but sufficiently to denote the person meant.

## **156.**

The ordering portion of the judgement in an original suit, whether decided after trial or otherwise, should set out the reliefs granted and in an appeal the modifications (if any) made in the original decree explicitly and with particularly and precision.

## **157.**

judgement should state specifically whether any or what interest (including interest pendente lite) is allowed, and also whether interest is to run only on the sum to be recovered under the decree or both on that sum and cost and at what rate.

## **158.**

judgements must be promptly written and delivered. The longer the delivery is delayed the less valuable is the decision likely to be. Delay in writing judgement weakens the grasp of the facts of a case and causes waste of time by the necessity of refreshing memory by study of records. It also intensifies the anxiety of litigants and prolongs their suspense.

## **159.**

The practice of reserving judgement without fixing any specific day for its delivery is objectionable and should not be resorted to. When after conclusion of arguments the presiding Judge cannot conveniently pronounce judgement at once on account of the complexity of the case, or the necessity to consider many rulings, he shall record an order in the order-sheet fixing a date for pronouncing judgement notice of which shall be given to the parties or their pleaders. If the judgement is not ready on that date, it should be adjourned to another date to be similarly recorded in the order-sheet

after due notice to the parties or their pleaders.

## **160.**

The practice of writing judgements (except when judgement is delivered immediately on the conclusion of the hearing) during the Court hours in the early part of the day is to be depreciated. judgements may be written after the day's cause list has been completed.

## **161.**

Every Judge proceeding on leave or transfer must write judgements in all cases and appeals heard by him up to and including the stage of arguments. In all cases where by reason of illness or sudden making over charge this rule cannot be followed, a report shall be submitted to the District Judge giving the date on which the case was closed for judgement and full reasons for failure to deliver judgement. The District Judge should carefully scrutinize the report and in all cases where he is not satisfied of the sufficiency of the reasons submit the report for the orders of the High Court. Note. - The High Court attaches great importance to the strict observance of this rule. Only in exceptional circumstances may a judgement be left to be written by a Judge's successor. The reasons given for so doing will be carefully scrutinized and unless cogent and convincing will not be accepted.

## **162.**

Courts have power to pronounce judgement at once for or against any one of the defendants when there are more defendants than one and the particular defendant is not at issue with the plaintiff on any question of law or of fact (Order XV, Rule 2, Civil Procedure Code). This power should be exercised on suitable occasions in order that trials may be confined to the real contesting parties. Similarly, Order XII, Rule 6, empowers the Courts to pass, on an application made for the purpose, a decree on admission at any intermediate stage of the suit. Note. - A decree passed under either of the two rules of the Civil Procedure Code referred to above is executable forthwith.

## **163.**

Attention is drawn to Section 3 of the Indian Law Reports Act 1875, which provides that a Court is not bound to treat a case reported in an unauthorized report as binding on it. The Courts usually accept citations from recognised Law Reports except when the correctness of the report doubted.

## **164.**

The attention of the Courts is drawn to Order XXII, Rule 6 which provides that, if any party to a suit dies between the conclusion of the hearing and the pronouncing<sup>^</sup> of the judgement may be pronounced, notwithstanding the death and that such judgement shall have the same force and effect it had been pronounced before the death took place.

## 2. Drawing Up of Decrees

### 165.

Decrees or orders should be prepared with great care and caution. Decrees or orders defectively drafted by ministerial officers and passed without correction and as a matter of course by the Judge, are cause of various troubles in execution. Attention is drawn to Order XX Rule 7, which requires the Judge to satisfy himself, before signing the decree or order, that it is in accordance with his judgement.

### 166.

(1)A decree or order must agree with the judgement and be not only self contained, so that it may not be necessary to refer to any other document or paper for its understanding and execution, but also precise and definite in its terms.(2)A decree or order (ex-parte or otherwise) shall specify clearly and distinctly the nature and extent of the relief granted, what each party affected by it is ordered to do or forbear from doing, and other determination of the suit (Order XX, Rule 6). Every declaration of right made by it must be concise yet accurate; every injunction simple definite and plain.(3)If a decree or order is affirmed on appeal the terms thereof shall be recited, so as to make the appellate decree or order complete in itself. If a decree or order is varied or modified, the relief granted in lieu of or in modification of that originally granted shall be fully and accurately set out. If a decree or order is reversed, the relief granted to successful party shall similarly be stated.**Note 1. -** Maps prepared by the direction of, or accepted by the Court and which are necessary to illustrate or explain the terms of the order passed should be attached to and should form part of the decree, or order and must be signed by the Judge.**Note 2. -** Where different valuations are put for purposes of jurisdiction and for payment of court fee, both values should be stated in the decree or order. The amount claimed as mesne profits should be separately shown. In the case of an appellate decree or order, the valuation as given in the decree or order of the first Court should also be embodied.**Note 3. -** Interest, if any, allowed by the Court should be clearly shown in the decree or order and also the period for which and the rate at which interest has been allowed. It should also be clearly stated therein whether interest is to run on the decretal amount or on both that amount and costs.

### 167.

In dealing with the cases of satisfaction, compromise or adjustment the attention of presiding Judges is invited to the provisions of Rule 3 of Order XXIII. This rule contemplates two separate actions by the Court- (1) Ordering the agreement, compromise or satisfaction to be recorded, (2) Passing decree in accordance therewith so far as it relates to the suit. A proper and effectual way of carrying out these actions will be either to recite the whole agreement in the decree and to conclude with an order relative to that part which was the subject-matter of the suit or to introduce the agreement as a schedule to the decree.

**168.**

When the subject-matter of the suit is immovable property, the nature of the property affected by the decree must, in accordance with Order XX, Rule 9, be clearly specified without reference to the plaint or to any other part of the record. Note. - In drawing up a decree for land it is the duty of every Judge to satisfy himself that such details are given as to render it impossible that there shall be any mistake as to the area and boundaries of the land and that nature of the right which the Court has adjudicated.

**169.**

To each decree in a mortgage suit should be attached a separate sheet showing in detail the process by which the amount declared due by the decree has been arrived at. The account shall be stated under the following general heads : (i) Principal sum secured by the mortgage. (ii) Interest thereon at the rate of..... from the..... day of..... 20..... to the..... day of..... 20..... (iii) Costs of the suit. The statement of accounts thus required to be furnished shall be signed by each pleaded who affixes his signature to the decree and shall then be signed and dated by the Judge at the time of signing the decree.

**170.**

If the amount of costs awarded by judgement is only a part of the amount of costs scheduled as having been actually incurred, the calculations by which the former amount is arrived at should be clearly indicated. The decree should not be signed and dated until the schedule of costs has been filled in and until it is in all respects complete.

**171.**

In suits where a preliminary decree is followed by a final judgement, a final decree shall be drawn up in terms of the final judgement. The final decree, being an adjudication completely disposing of the suit and conclusively determining the rights of the parties, shall be full and complete in itself, so as to be capable of being understood and executed without any reference to the preliminary decree.

**172.**

When the decree is against a spouse for restitution of conjugal rights, it should order that the spouse do return.

**173.**

Decrees shall ordinarily be prepared within three days of the judgement or order.

**174.**

Every decree shall set forth the powers of the Judge in exercise of which the suit was decided by him and shall bear date, the day on which the judgement or order is pronounced.

**175.**

The directions contained in Order XX, Rule 6, of the Code of Civil Procedure, are very often imperfectly complied with. The names and descriptions of the parties to the suit must invariably be set forth in full; where there are several plaintiffs or several defendants it is not sufficient to enter the name of one person only with addition of "etc".

**176.**

(i)As soon as a decree has been drawn up the Court shall cause a notice to parties and their pleaders of decrees being drawn up (in Form No. 211 on Schedule II) to be exhibited on the notice board stating that such decree has been drawn up and that it may be perused by the parties or their pleaders within three days from the date of posting of the notice.(ii)When such notice has been posted any party or his pleader may before the expiry of the time prescribed in the last preceding rule peruse the decree and if it is incorrectly prepared bring the matter to the notice of the Court.(iii)If no such objection is made on or before the date specified in the notice the Judge shall sign the decree giving the date of his signature.(iv)If any objection is raised as to the correctness of the decree it shall be heard and disposed of by the Judge by an order to be recorded in the order-sheet and the correction or alternation, if any, as directed by him, shall be made in the decree and initialled by the Judge. When the above preliminaries have been concluded, the presiding Judge, having satisfied himself as to the correctness of the decree and the schedule of costs, shall sign it and endorse the date of his signature.

**177.**

A decree shall be drawn up in case of dismissal under Order XLI, Rule 11 (1), Civil Procedure Code. No decree shall be drawn up in case of rejection of plaint and determination of any question falling within Section 47 or Section 144 or in case of any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. But in such cases a schedule of costs shall be drawn up just below the order passed and the names of the parties by whom costs are to be paid and received shall also be stated and signed by the Judge.

**178.**

Copies of all decrees, original and appellate, passed in pauper suits shall be transmitted without delay to the Collector of the district in which the Court passing the original decree is situated.

### 3. Costs

#### 179.

(1)The discretion vested in the Courts by Section 35 of the Civil Procedure Code should be so exercised as to award to the successful party, as costs, a sum approximately equal to the amount which he has been compelled to spend. In particular, provision should be made for costs of making, copies of pleadings, applications or affidavits which by the rules are required to be served on the opposite party, for the costs of obtaining certified copies of relevant documents put in evidence and for money spent in paying searching fees at registration offices in order to obtain necessary documents.(2)The discretion should be exercised judicially after taking into consideration the particular facts and circumstances of each case. The matter must not be delegated to clerks. The items of costs at the foot of the form of decree are not exhaustive. The scales of pleader's fees, as prescribed by rules made under the Legal Practitioners Act, 1879, or the Bar Councils Act, 1926, are also not rigid, and express provision is made in the rules that more or less costs than allowed by the scale can be awarded if the circumstances of the case so required. If the items given in the form of a decree do not cover any particular item of costs, new items as required may be added in manuscript.

#### 180.

(1)The taxing of costs is a matter which has in the past received too little attention and Judges will find that the proper allocation of costs will be of great help in increasing the use made of Orders XI, XII and X1H of the Code. The mandatory provisions of Order XII, Rule 4, and Order XI, Rule 3, are often ignored. No cost should be allowed which appear to the court to have been incurred or increased unnecessarily or through procrastination, negligence or mistake.(2)When amendment of pleadings, adjournment, restoration, etc., has been allowed on terms care should be taken to see that the effect of the terms are properly incorporated in the schedule of costs.(3)Without prejudice to the general directions given above proper and necessary costs to be allowed should exclude expenses such as the following unless the Court specifically directs otherwise :(i)Court-fee stamps on all applications dismissed, or not allowed or not pressed.(ii)Court-stamps on all unnecessary or defective applications or applications to suit the convenience of a party, such as, for adjournment of hearing, for time to file written or other statement or to take some step, for showing cause in case of any default or omission, for withdrawing a claim, for amendment of any pleading or petition and the like.(iii)Expenses of affidavits made for the convenience of a party or his witness or which are defective or which unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents.(iv)Expenses of filing and providing all unnecessary document or documents which the other party was not previously called upon to admit by notice (Order XII, Rule 2), or of exhibiting all unreasonable interrogatories (Order XI, Rule 3).(v)Process fee for serving persons dismissed from the suit, or found by the Court to have been unnecessarily impleaded, or the claim against whom has been dismissed, withdrawn or not prosecuted.(vi)Charges incurred in procuring the attendance of unnecessary witnesses.(vii)Extra costs incurred in obtaining an express copy under Rule 519 (2).

**181.**

Every Judge should at the time of passing order on each application note whether or not the costs of it should be costs in the cause, or plaintiffs (or defendant's) cost in any event and, before signing the decree, shall satisfy himself that such directions have been given effect to in the schedule of costs.

**182.**

Where "proportionate costs" are allowed, such costs shall bear the same proportion to the total costs as the successful part of the claim of each party bears to the total claim. When "corresponding costs" or "cost according to success" are decreed, the assessment is to be made as if the suit had originally been brought at an amount representing the value of the successful part of the claim.

**183.**

Under Section 35A, Civil Procedure Code, compensatory costs for false or vexatious claims or defences can be awarded by Courts under certain circumstances there set out.

## **Chapter X**

### **Execution of decrees**

#### **1. General**

**184.**

(1)Execution of decrees or of orders should receive as much attention as original suits and appeals. Every presiding Judge should see that the processes of the Court are not abused, that the reliefs available under decrees or orders are obtained by applicants and that cases are disposed of as speedily as possible.(2)All cases of fraud, negligence, suppression of processes and resistance to execution should be carefully scrutinized by every Judge with a view to punishing the offenders and taking such steps as may be necessary to prevent their recurrence.(3)Close supervision and control should be exercised by District Judges over the execution of decrees business pending in all Courts subordinate to them, and any officer who habitually neglects this branch of work or disposes of it perfunctorily should be reported to the High Court.

**185.**

Execution work should be taken up at regular intervals. The most satisfactory method is to fix one or more days a week, sufficient for the disposal of the execution work. Should the work be in sufficient for a complete day a portion of a day may be allotted.



## **186.**

In dealing with application for execution the attention of the Courts is invited Rules 11 (2), 12 and 13 of Order XXI, Civil Procedure Code, which lay down the particulars to be included in such applications. The Courts should see that the required particulars are distinctly and completely set down and should not grant any relief not specifically mentioned in the application. In particular, interest, if any subsequent to the decree should be correctly calculated and the total amount for which execution is prayed should be clearly stated. If possession is sought the kind of possession desired should appear; and if actual possession is sought it should appear that the judgement debtor or some one bound by the decree is in actual possession.

## **187.**

The filing of a copy of the decree along with the application for execution is not compulsory, but if it is not possible to verify the correctness of the particulars in the application for execution from the Court register the Court may ask the applicant to produce a certified copy. [Order XII, Rule 11 (3)]

## **188.**

On receipt of an application for execution an order-sheet shall be attached to it at once and a short date, ordinarily three days ahead, shall be fixed for the appearance of the applicant. In the mean time the execution clerk shall check the application and endorse on it a report certifying that he has done so and showing in detail the defects, if any, discovered by him. The application shall be put up by him for the Judge's on the date fixed.

## **189.**

Checking of applications for execution as required by Order XXI, Rule 17, should be done with care and attention. While it is necessary to be satisfied that all essential and material particulars are correctly stated, should at the same time be impressed upon the ministerial officers authorized to receive applications that they are not to be returned on frivolous grounds.

## **190.**

(1) On the date fixed-(a) if the applicant appears, the application, (i) if correct, shall be admitted and registered as required by Order XXI, Rule 17 (4); (ii) if incorrect, may be allowed to be amended then and there or returned for amendment with a date fixed for representation; (b) if the applicant does not appear, the application shall be rejected. (2) If the particulars of the application correspond with the entries in the register of civil suits, etc. or if the applicant accepts those entries as correct and amends his application accordingly, an order for execution should at once be made. If any discrepancy between the entries in the application and those in the register cannot otherwise be reconciled, the admission of the application should be deferred pending a reference to the previous records. Note. - The use of the words "struck off" is undesirable. The order should make clear

whether the proceedings are dismissed or adjourned(3)When the application returned for amendment is represented after proper correction, it shall be admitted and registered If the application be Found to be not duly corrected the Court may reject it or grant further time for amendment. If the application is not represented m time it shall be rejected unless the Court thinks fit to grant a further extension.Note. - All orders prior to the registration of the application should be recorded in the order-sheet and signed by the Judge.

## **191.**

Where an application is made under Order XXI, Rule 15, by one or more of several total decree-holders, the court shall, unless a written authority permitting the applicants to execute the decree and to receive the money or property recovered, signed by the other decree-holders and verified as to its genuineness by the applicants, is filed in Court give notice of the order, if any, passed for the execution of the decree to all the decree-holders who have not joined in the application, and may also in its discretion give notice of any application for payment or delivery to the applicant or applicants, of any money or property recovered in execution, or may make such orders as it deems necessary for protecting the interest of the persons who have not joined in the application.

## **192.**

An order under Order XXI, Rule 24, appointing a ministerial officer to sign processes for execution should be writing; but processes for attachment, sale and delivery of possession of property and also warrants of arrest should be signed by the presiding Judge himself.

## **2. Payments And Satisfaction**

## **193.**

All moneys recovered by an officer executing a process or conducting a sale shall be paid into Court in the manner prescribed in Rule 72, Instruction XIV and Rule 514.

## **194.**

The attention of the Courts is drawn to Order XXI, Rule 1 (2) which requires that when money payable under a decree is paid into Court either by deposit or by postal money order, notice of such payment shall be given to the decree-holder. In case of payment by postal money order the notice may be given by registered post by the judgement-debtor direct to the decree- holder.

## **195.**

(1)When payment under a decree is made out of Court or it is otherwise adjusted in whole or in part under Order XXI, Rule 2 (1), a certificate in the form given below shall be presented to the Court.

Such certificate need not be stamped. Should the certificate be accompanied by a formal written application, the application must be stamped under the Court-fees Act; but the stamp shall not be charged as costs against the judgement-debtor. The form of the certificate shall be as follows :In the Court of the.....at.....Plaintiffversus.....DefendantExecution Case No of 20.....Certificate By Decree-Holder/pleader For The Decree-Holder Under Order XXI, Rule 2 (1), Civil Procedure CodeI,.....decree-holder/pleader for the decree-holder, certify to the Court payment or adjustment in the following terms of the amount of Rs.....in the above case by.....on the.....Date ....20.....Decree-holder/pleader for the Decree-holderNote 1. - If the certificate contains any extraneous matter or anything in the nature of a prayer, it should then be treated as an application, and will require to be stamped.Note 2. - The payment or adjustment shall be noted in the appropriate columns of the register of suits.(2)Whenever it comes to the knowledge of a server who has a process for execution that a payment has been made out of Court, he should report it in the endorsement required to be made under Order XXI, Rule 25 (1). The Court will then ascertain whether the decree-holder admits receipt of the payment, and the amount of which receipt is admitted should be recorded as required by Order XXI, Rule 2, and entered in the register of suits. If payment is not admitted by the decree-holder, it should be ascertained whether the judgement-debtor asserts that he made the payment; any necessary inquiry will then be made under Section 47 of the Civil Procedure Code and the result noted in the aforesaid register.

## 196.

Money paid into Court shall be paid to the person entitled to receive the payment or to his authorized agent in manner prescribed in [Rule 511 (5).] [The correct rule No. should be 466 (5).]Note. - No payment shall be made to the pleader of the applicant unless his power of attorney contains an express authority for the purpose, or a separate instrument distinctly confers on him the authority to receive payment.

## 3. Attachment

### A. Attachment of immovable property

## 197.

Application for attachment of immovable property should contain a description of the property sufficient for clear identification. For this purpose the survey number and area and the revenue or rent of land should be shown. The application should also specify the nature and extent of the judgement-debtor's interest.Note. - See Note below paragraph 2, Rule 223.B. Attachment of movable property and livestock.

## 198.

In dealing with application for the attachment of livestock the attention of the Courts is drawn to the provisions of Paragraph (b) of the proviso to Section 60, Civil Procedure Code. The Courts must

scrutinize with care all such applications and must be rigorous to prevent the attachment of cattle protected by that section. The section imposes upon the Courts an obligation to exercise their discretion in such a matter and the High Court will view seriously any case which comes to its notice in which that discretion has been evaded or exercise carelessly and negligently. Objection to the attachment of cattle on the ground that the cattle are not liable to attachment by virtue of Section 60 must be dealt with as early as possible and the High Court will not tolerate delay in dealing with such matters. District Judges at the time of inspection should check whether these instructions are being properly followed.

## 199.

Particular attention of all Courts is drawn to Order XXI, Rules 43 and 43-A, Civil Procedure Code, as amended by the High Court. The following additional rules relating to the maintenance and custody, while under attachment of livestock and other movable property are to be served: (i) For the purpose of these Rules movable property is classified as- (i) Livestock. (ii) Heavy and bulky property. (iii) Light and convenient portable property. (iv) Standing crops. (i) Livestock (ii) The attaching officer shall, in every case, make a list and valuation of the livestock attached in the following Form:

Number of suit and names of parties	Kind of livestock	Colour distinguishing marks and approximate age of livestock	Condition and approximate value of livestock	To whom livestock is entrusted and what security taken
(1)	(2)	(3)	(4)	(5)

and shall obtain thereto the acknowledgment of the person in whose custody the livestock are left, and if possible, of the parties to the suit and one or two respectable inhabitants of the locality, in attestation of the correctness of the list. (ii) Heavy and bulky property (iii) When an application is made for the attachment of heavy or bulky articles, the Court may demand in advance such sum in cash as may seem requisite for the purpose of conveying the said articles from the place of attachment to the Court-house, or to such other place as the Court shall appoint. But the Court may direct that such articles, after seizure shall be entrusted, on such terms as it may think fit, to the judgment-debtor or to some respectable person who is willing to undertake the custody thereof to and officer of the Court, to be kept in such place of safety as it may direct. (iv) The attaching officer shall prepare an inventory of such articles attached, and shall obtain thereto the acknowledgment of the person in whose custody they are left, and if possible, of the parties to the suit, and of one or two respectable inhabitants of the locality in attestation of the correctness of the list. (v) In determining whether such articles should be taken to the Court-house or should be deposited elsewhere, the probable cost of their carriage in proportion to their value should be taken into account. (iii) Light and conveniently portable property (vi) Light and conveniently portable articles of all kinds and especially valuable property of small bulk, such as jewels, etc., shall, after seizure, be made over to an officer of the Court, to be kept in such place of safety as the court may direct. Pistols and revolvers shall be sent by the Court for safe custody, to the police station-house at the place where the Court is situated. (iv) standing crops (vii) When watchmen are required for standing crops of

grain, fruit or the like, a sum in cash at a rate not exceeding seventy-five paise per diem shall, if the Court ordering the attachment thinks fit, be levied in advance for the period during which such watchmen are to be employed. C.I-Attachment of Salary or Allowances of Persons in Government or Railway Service And of Persons Serving Under Local Bodies

## **200.**

(1) Under clause (1) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908, such allowances forming part of the emoluments of any servant of the Government or of any servant of a Railway Company or Local Authority as the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment are inter alia exempt from attachment. These are particularized in Appendix I. (2) Courts should keep compilations of the latest periodical notifications issued by the State Government under Section 61 of the Code of Civil Procedure exempting agricultural produce from attachment in the case of all or any class of agriculturists. C.II-Arrest and Attachment of Pay and Allowances of Persons in the Army, Navy and Air Force

## **201.**

(1) Particular attention is drawn to the fact that the exemption from attachment under clause (i) of sub-section (1) of Section 60 of the Code of Civil Procedure of the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, applies or of certain persons of the Navy must be read with the rights and privileges conferred by Sections 28, 29, 30 and 32 of the Army/Air Force Act, 1950 and the corresponding Sections 20, 21, 22 and 24 of the Navy Act, 1957. (2) The attention of all Courts is also drawn to Government of India, Ministry of Home Affairs Memorandum No. 50/51-Judicial, dated the 7th January, 1954, in respect of arrest and attachment of pay and allowances of the Armed Forces, etc., which is given in Appendix I. (3) Persons who are subject to the Army and Air Force Acts are given in Sections 2 and 3 of these Acts. (4) Persons in naval services in India are subject to the Navy Act, 1957 (52 of 1957), and the persons subject to naval law are given in Section 2 of the Navy Act, 1957.

## **202.**

When under Order XXI, Rule 48, a Court attaches the salary or allowances of a servant of the Government or of a Railway Company or of a local authority, the appropriate Government or the Railway or local authority, as the case may be, is liable for any sum disbursed in contravention of the attachment order, if a notice of the order of attachment has been given to such officer as the appropriate Government may, by notification in the Official Gazette, appoint for this purpose. The attachment order should be addressed to the proper officer. A list of the officer so notified is given in Appendix I.

## **4. Disposal of Objections**

### **203.**

The attention of the Courts is directed to the proviso to Order XXI, Rule 58 (1), which requires that no investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed. Note. - It is for the Courts to decide reasonably on the circumstances of each case whether there has been such delay; but if the Court decides that there has been such delay, the law leaves it no option as to the dismissal of the claim or objection.

### **204.**

It should be borne in mind that the investigation contemplated by Rule 58 aforesaid is of a summary character and should be completed as promptly as possible and not allowed to remain pending month after month as is too often the case. The inquiry must be restricted to matters indicated in Order XXI, Rule 60, or properly ancillary thereto, the main questions being who was in possession at the time of attachment and on whose behalf the possession was held at that time.

## **5. Sale**

### **205.**

Sales under Order XXI, Rule 64, should normally be held at the Court-house weekly on a fixed day and commencing at a fixed hour. Sales of livestock, agricultural produce and other articles which have not been brought to Court and which are commonly sold at country markets should, unless the Court otherwise directs, be held in such a market in the neighbourhood of the place of attachment. In cases in which the property to be sold is of considerable value it may be found desirable to advertise the sale in a local newspaper. In fixing sales regard should be had to the interests of the judgement-debtor and to the prospect of obtaining good prices.

### **206.**

(1) Ordinarily the Courts should not fix for the sale of property attached in execution of a decree a date which falls on a Sunday, on the Gazetted holiday or in the Civil Court vacation. Sales held elsewhere than at the Court-house may be fixed in the vacation but should not be so fixed if sufficient cause is shown by either of the parties. These directions do not apply where the property is perishable or where on other grounds speedy sale is desirable. (2) When a Court considers it necessary to fix a sale on holiday, and judgement-debtor, if present, should be asked whether he has any objection and his answer should be recorded. (3) If, in any week, the date fixed for sales under Rule 205 falls on a holiday, the sales should be held on the next Court-day, provided that the adjournment is not for a longer period than seven days.

**207.**

In addition to the proclamations required by Order XXI, Rules 66 and 67, Civil Procedure Code, every sale of movable property to be held at the Court-house should be proclaimed by beat of drum a day before the date of sale.

**208.**

In order to secure the best price for immovable property put to auction by the Civil Courts in execution of decrees, it is desirable that proclamation by beat of drum should be made at the nearest market place at the market time, not earlier than a week before the date of auction, and also by beat of drum at least half an hour before the auction when the property is to be sold at the spot. These proclamations will be in addition to those already prescribed by the Civil Procedure Code. Efforts should also be made to bring sales to the notice of a class of possible bidders whom it might otherwise escape. Ordinarily, those who are likely purchasers have frequent recourse to the tahsil building which is thus a suitable place for advertising such sales. In addition, therefore, to the processes mentioned in Order XXI, Rule 67, read with Rule 54, Civil Procedure Code, the Court should advertise the sale at the tahsil building on a special notice board in the following Form : Notice of sale No. of decree..... Name of parties..... Place of sale..... Date of sale..... Property to be sold..... Name of the Court..... Date..... Signature.....

**209.**

One notice board will suffice for all the Civil Courts at the station. The heading "Notice of Civil Court Sales" should be painted at the top of the board with white lead in bold letters and the board should be exhibited in a conspicuous part of the tahsil building separately from the ordinary notice board. Subsequent forms may be pasted over the previous ones so as to leave the latter in a fit condition to be read at any time.

**210.**

Sales of immovable property in execution of decree shall be conducted by the following official, viz :- (i) when the sale is held at the district Court-house, by the Sale Amin or an official not inferior in rank to a Naib-Nazir; (ii) when the sale is held at the district other than the district Court-house, by a Sale Amin or a Naib-Nazir an official-superior in rank to a process-saver.

**211.**

On each fixed date, the sale shall be commenced at the hour fixed and stated in the proclamation of sale. No sale shall continue after sunset; but the sale shall be held from day-to-day and throughout the day, except when the Court is closed, and until the lists of the property to be sold are finished; provided that this rule shall not interfere with the adjournment of any particular sale according to law. Note. - The officer conducting a sale within the precincts of a Court-house has no power to

adjourn the sale (Order XXI, Rule 69) and in the event of the sales fixed for the day not being completed on that day want of time or any other reason, the order of the Court concerned must be taken in each case and recorded in the order-sheet of each execution case postponing the sale till the next day or to any other specific day and hour as may be directed by the Court.

## **212.**

In the case of encumbered immovable property, if the mortgagee is not in possession the Court has the discretion under Order XXI, rule 62, C.P.C., to continue an attachment even when it is satisfied that the property is subject to a mortgage or charge. The Court is required by Order XXI, Rule 66, to specify in the sale proclamation all material information, among other things, about the property to be sold. If the Court is satisfied that there is a valid and subsisting mortgage the sale of the property may be subject to the mortgage, but if the mortgage is in possession, the proper course is to sell only the equity of redemption.

## **213.**

An application for leave to bid at the sale under Order XXI, Rule 72, should set out any fact showing that an advantageous sale cannot otherwise be had.

## **214.**

Leave should not ordinarily be given except for reasons to be recorded, without fixing a minimum amount below which the decree-holder will not be allowed to bid. Such amount shall, as far as practicable, be fixed with reference to the probable market value of the property to be sold.

## **215.**

If the decree-holder, who has obtained permission to bid for or to purchase any property directed to be sold, is declared to be the purchaser, he shall file an application for an order to set off the purchase-money or part thereof, as the case may be, against the amount of the decree, and the fee payable by way of poundage on the full amount of the purchase-money that shall be paid by stamps affixed thereto. No dispensation from the requirements of Order XXI, Rule 84 (1), shall be granted under Order XXI, Rule 84 (2), otherwise than upon such an application duly stamped as aforesaid. No set off should, however, be allowed where an application for rateable distribution has been filed.

## **216.**

Where the fee payable by way of poundage on the full amount of the purchase-money has once been paid in full in respect of any sale, no further fee shall be payable in respect of the same sale.



**217.**

When the sale of immovable property is set aside under Order XXI, Rule 92 (2), Civil Procedure Code, no fee shall be payable by way of poundage on the purchase money. If poundage fee has been paid and the sale is subsequently set aside the amount paid shall be refunded.

**218.**

If default be made in the payment of purchase money within the time specified in Order XXI, Rule 885, the fee payable by way of poundage shall be deducted from the deposit made under Order XXI, Rule 84, Civil Procedure Code. The Court-fee stamps representing such fee shall then be brought and affixed by the Court to the order directing the deduction to be made.

**219.**

The mere fact that the property has been sold for an inadequate price is not a ground for setting aside a sale in execution of a decree. In order to support an application under Order XXI, Rule 90, it must be shown that there has been a material irregularity or fraud in publishing or conducting the sale, and that the applicant has sustained substantial injury by reason of such irregularity. Note.-It should be borne in mind that no application for setting aside a sale should be entertained upon any ground which could have been, but was not put forward by the applicant before the commencement of the sale (Order XXI, Rule 90, second proviso, as amended by the High Court, vide Notification No. 5283-A, published in "Madhya Pradesh Rajpatra", dated 16-9-1960).

**220.**

Order XXI, Rule 73, Civil Procedure Code, prohibits any person who has any duty to perform in connection with a sale in execution of a decree, from bidding, acquiring or attempting to acquire any interest in the property sold. Note.-No person employed in ministerial or menial service under a District Judge may, without first obtaining the District Judges' written permission, bid for any property movable or immovable put up for sale in execution of a decree or otherwise by order of a Civil Court acting judicially within the district in which he is serving.

**221.**

Whenever guns or other arms in respect of which licences have to be taken by purchaser under the Indian Arms Act XI of 1878, are sold by public auction in execution of decree, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchaser of such arms, so that proper steps may be taken by the Police to enforce the requirements of the Indian Arms Act.

## **222.**

Certificates of sale are required to be drawn up on impressed stamps (Article 18, Schedule I of the Stamp Act, 1899) which should be furnished in each case by the auction-purchaser.

## **223.**

(1)The Court in preparing the certificates should adhere, as closely as possible, to the wording of the prescribed form (Form No. 38 in Appendix E to the Civil Procedure Code and borne on Schedule 11-258). The draft of the certificate after it has been approved and signed by the Court should be filed with the execution case, and the certificate should be engrossed on the stamped paper free of copying charge, in accordance with the draft, and should bear date and the day on which the sale became absolute. The certificate should also indicate the day on which it was delivered to the auction purchaser.(2)The following particulars should be inserted in every case :-(i)the name and addition [as defined in Section 2 (1) of the Indian Registration Act, 1908] of every judgement-debtor and of every person declared purchaser;(ii)particulars sufficient to identify the property including boundaries and area, and where necessary' survey number and revenue or rent, as the case may be;(iii)the name of each registration sub-district in which any part of the property is situate;(iv)the amount of the purchase-money; and(v)whether the property is sold subject to encumbrances, if so, the exact nature of the encumbrances. This must be in accordance with what is stated in the sale proclamation.Note. - In order that the full and necessary particulars mentioned above may be incorporated in the sale certificate the Court should insist on their being furnished in the schedule attached to the application for execution and also in the sale statement.(3)The description of the property given in the certificate of the sale must correspond with that given in the sale proclamation prepared under Order XXI, Rule 66 of the Code.

## **224.**

Under Section 89 (2) of the Registration Act, 1908, every Court granting a certificate under Order XXI, Rule 94, Civil Procedure Code, is required to send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate. The value of the stamp on which the original certificate is issued should be noted on the copy so sent.

## **225.**

(1)The Courts are cautioned against any attempts by purchasers at Court sales to obtain possession of the property sold, in evasion of the provisions of Order XXI, Rules 95 and 96, Civil Procedure Code. No order for delivery of possession should be made under either rule in favour of a purchaser to whom a certificate has not been granted, and no application for possession should, therefore, be entertained, unless the Court is satisfied that a certificate has been issued. As a general rule, the production of the original certificate should be required before the order for possession is passed on the application.(2)When possession is delivered under Order XXI, Rule 96, the copy of the

certificate to be affixed under the direction of the court should be a certified copy prepared on an impressed stamp, to be supplied by the purchaser (Article 24, Schedule I of the Stamp Act, 1899).

## **6. Arrest, Imprisonment and Release**

### **226.**

Under Section 55 (2), C.P.C., the State Government may by notification prescribed the procedure for the arrest of any person or class of persons in the interest of public convenience. Details of such notifications are given in Appendix I.

### **227.**

Under Section 57 of the Code of Civil Procedure the State Government may fix the monthly allowances payable for the substances of judgement-debtors. The scales so fixed are given in Appendix I.

### **228.**

It is to be noted that by the provisions of Order XXI, Rule 30, the subsistence and cost of conveyance of the judgement-debtor for his journey from the Court-house to the civil prison and from the civil prison, on his release, to his usual place of residence, together with the first payment of subsistence allowance in advance for such portion of the current month as remains unexpired is to be paid to the proper officer of the Court before the judgement-debtor is committed to the civil prison and the subsequent payments, if any, to the officer-in-charge of the civil prison. The money paid into Court should be sent to the jail, and not given over to the judgement-debtor.

### **229.**

The rates of subsistence allowance are fixed on an estimate of the actual requirements of various classes of judgement-debtors based on the ordinary mode of their living. A civil prisoner should, therefore, be classified according to his status prior to his committal to jail. Care in the classification of civil prisoners is necessary so as to avoid short rations or having to live on a class of food to which they are unaccustomed. Committing debtor to prison to meant as penalty but not classification.

### **230.**

It should be borne in mind also that the rates of subsistence allowance are elastic. The prescribed rates can be increased in case of sickness or for any special reason within the ambit of the rates fixed. Higher allowances can be granted during passing seasons of local scarcity. It is expected that Courts will exercise within proper limits the discretion which has been vested in them.

**231.**

Warrants for release should not be despatched by a Court after sunset or, if so despatched should be endorsed with instructions for release as early as possible next morning.

**7. Resistance to Execution (Anticipated and Actual)****232.**

(1) A decree-holder playing for police help in execution shall state in his application the full reasons thereof, supported, if required, by an affidavit. The Court may further examine the decree-holder or such other persons as it thinks fit touching the necessity of police help. If, upon a consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger to the public peace, he may, after recording his reason for so doing, make a request through the District Judge to the District Superintendent of Police of the district for such police aid as the latter may be able to give in the execution of the writ. It is to be understood that police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency. The District Judge should, therefore, satisfy himself that all other measures have failed before the request is forwarded. (2) The requisition to the District Superintendent of Police should state in brief the need for such aid, the number and rank of man required, the nature of the process and the place where it is to be executed. It will be for the District Superintendent of Police to decide how best and when he will be in a position to offer the help sought and the party concerned shall be ordered to deposit such costs for the service as the District Superintendent of Police may require under the rule of the department. Note. - Police aid shall not be requisitioned or taken in effecting the arrest of judgement-debtors.

**233.**

(1) When a process-server or other officer in execution or service of any process entrusted to him is resisted or obstructed, or when property duly attached is illegally taken from his possession, or when a person duly arrested escapes from his custody, he shall immediately return to headquarters and make a report of the occurrence. If he is at such a distance from headquarters that return will involve considerable time he should also immediately send a written report from the place of occurrence to the Court. (2) The Court shall on his arrival examine him on oath and may also examine on oath any person alleged to have been present at the occurrence and shall then decide whether a criminal complaint is necessary in the interest of justice but may, if it thinks fit, first refer the case to the police for enquiry. When filing a complaint the provisions of Section 195 (1)(a) and Section 476. [Criminal Procedure Code] [See now Code of Criminal Procedure, 1973 (2 of 1974).], should be carefully observed. Note. - It is essential that there should be no delay in dealing with these matters. Where prosecution is called for, prosecution delayed is often prosecution wasted. On the other hand, great care should be taken in deciding on prosecution as unsuccessful precautions are most undesirable. (3) If the case is of sufficient importance and the Court is of opinion that a

competent lawyer should be engaged for the prosecution for the ends of justice and for the better conduct of the case, it should move the District Judge who will then, if necessary, move the proper authority for the purpose.(4)The Court should after the termination of the Criminal case (if any), make a request to the Criminal Court to forward a copy of the judgement with a view to see whether there has been any adverse finding or comment against the conduct of the process-server concerned, necessitating the taking of disciplinary action.

## **8. Execution of Decrees of Another Court**

### **234.**

(1)The provisions of clause (c) of Order XXI, Rule 6, should be strictly followed by the Court sending a decree for execution to another Court under Section 39, Civil Procedure Code.(2)An application for the transmission of a decree to another Court for execution shall be made by a verified execution petition and shall state, in addition to the particulars set out in clauses (a) to (i) inclusive, of Order XXI, Rule 11 (2), any facts relied on by the applicant to bring the case within the terms of Section 39 and Order XXI, Rules 4 and 5, and shall specify the Court to which the transmission of the decree is sought.Note. - A copy of the registered address, if any, filed by the judgement-debtor should accompany the certificate forwarding a decree for execution to another Court, the date up to which the address will be effective being noted on it.

### **235.**

A Court receiving a decree for execution should cause the copies and certificates specified in Order XXI, Rule 6, to be filed under Rule 7 of the same order and an entry to be made in its "Register of Decrees received from other Courts for execution". The Court may then, on the application of the decree-holder, execute the decree.

### **236.**

If a District Court directs the decree received by it to be executed by a subordinate Court under Order XXI, Rule 8, the case should be shown in the register of the District Court as disposed of by transfer. The result of each application for execution should be certified in detail under Section 41, Civil Procedure Code, whether there has been satisfaction in whole or in part, no satisfaction at all or a dismissal for default without issue of any process. Form No. 254 on Schedule II of the Civil Judicial Forms in English should be used for the purpose.

### **237.**

If for three years after the receipt of the certificate (or, for twelve years, if the decree be one passed by a High Court in exercise of its ordinary original civil jurisdiction or if it be an order of the Supreme Court), no steps are taken by the decree-holder in the Court to which the decree is transferred, the papers should be returned to the issuing Court with the certificates in Form No.

11-254 as required by Section 41 of the Civil Procedure Code. The Court to which the papers are returned may destroy them if it is satisfied that execution has become barred by limitation.

## 238.

Certificates shall be kept, until application for execution is made in a file-book suitably labeled and provided with an index in the following Form which shall be renewed yearly in January :-Index to file-book of certificates of decrees received from other Courts for execution

Date of receipt of certificate	Court from which received	Number and year of the case	Date on which application for execution was made	If no application for execution was made, date on which the certificate was returned to the Court which issued it	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

Whenever the registers of a Court are inspected, the inspecting officer should make a point of comparing the contents of the file-book with the entries in the register of decrees received from other Courts for execution.

## 239.

Section 43 of the Code of Civil Procedure refers to Courts established in any Part of India to which the provisions of the Code do not extend. Sections 43 and 45 of the Code refer to Courts established or continued by the authority of the Central Government outside India. These Courts-are the same as those referred to in clauses (a) and (b) respectively of Section 29 of the Code of Civil Procedure and explained in Rule 96 of the Rules and Orders (Civil).

## 240.

Decrees of any revenue Courts in any part of India to which the provisions of the Code of Civil Procedure do not extend can be executed by the Courts in this State if the State Government so declare by a notification under Section 44 of the Code of Civil Procedure. Details of such notifications are given in Appendix I.

## 9. Foreign Decrees and Execution by Reciprocity

**241.**

Both as regards execution by Indian Courts of decrees of Court outside India and as regards execution by Courts outside India of decrees of Indian Courts, it has to be carefully observed by all judicial officers that such proceedings are only possible if specific provision has been made. The ordinary rule is that the Courts of one country do not execute the decrees of the Courts of another and that to enforce a foreign judgement it is necessary to bring a suit.

**242.**

(1) The specific provision made by the Code for the execution of decrees of superior Courts of any reciprocating territory is to be found in Section 44A of the Code of Civil Procedure. Details of the notifications issued in respect of reciprocity are given in Appendix I. (2) Besides the High Courts, all District Courts in India and all other Courts whose civil jurisdiction is subject to no pecuniary limit are considered to be superior Courts. (3) If the decree sought to be filed in the superior Court of a reciprocating territory is of a Court lower than a District Court, it should be sealed with a seal showing that the jurisdiction of the Court is subject to no pecuniary limit. Instructions issued by Nagpur High Court regarding satisfaction of decrees - The following table illustrates the application of the terms "satisfaction obtained in full", "satisfaction obtained in part" and "wholly infructuous", and will enable the Courts to classify correctly disposed off proceedings in execution of decrees :-Table

No.	Circumstances under which proceedings were dismissed	Proper head
(1)	(2)	(3)
1.	Execution entirely disallowed, because barred by the Limitation Act. Execution applied for in respect of unpaid balance of a money decree, and amount realized in full.	Wholly infructuous
2.	Execution applied for in respect of three last instalments due on decree; execution disallowed in respect of one instalment, because barred by the Limitation Act, but remaining instalments realized in full.	Satisfaction obtained in full.
3.	During execution proceedings certain items in claim disallowed as not covered by the decree, balance realized in full.	Satisfaction obtained in part.
4.	Decree being against three judgement debtors, each for his separate share of a debt, one judgement-debtor paid in full and nothing was realized from the remaining judgement-debtors.	Satisfaction obtained in full.
5.		Satisfaction obtained in part.

- |     |   |   |
|-----|---|---|
| 6.  | Execution applied for in respect of instalments overdue on a decree for payment by instalments, and amount realized, but other instalments remained to fall due under the decree.   | Satisfaction obtained in part.  |
| 7.  | Delivery made of specific movable or immovable property decreed but costs decreed not realized.   | Satisfaction obtained in part.  |
| 8.  | Delivery of specific movable property found impossible but costs decreed realized.  | Satisfaction obtained in part.  |
| 9.  | Realization made, and held by the Court (with the Court Nazir, or in treasury deposit) for the decree holder, pending his appearance to receive the same.   | [Satisfaction obtained in full or Satisfaction obtained in part.] [According as the realization was in full or in part satisfaction of the decree, the relief decreed being practically obtained by the decree-holder when the amount is paid to his credit.] |
| 10. | Realization made but decree holder wholly or partially dissatisfied thereto by decree of appellate Court before the case was dismissed.   | [Satisfaction obtained in full or Satisfaction obtained in part.] [According to the result of the proceedings in execution of the original decree independent of the appellate Court's decree.]   |
| 11. | Decree holder accepted fresh bond from judgement-debtor and filed receipt in Court in full satisfaction of the decree.  | Satisfaction obtained in full.  |
| 12. | Most of the amount decreed having been realized, balance remitted to decree holder and decree-holder filed receipt in full satisfaction of claim.   | Satisfaction obtained in full.  |
| 13. | Execution applied for in full satisfaction of decree, part payment pleaded and admitted balance realized.   | Satisfaction obtained in full.  |
| 14. | Part of the amount decreed realized, and case dismissed on decree-holder's waiving further immediate execution on judgement-debtor's promise of future payment, but without certifying acceptance of promise as adjustment of decree. | Satisfaction obtained in part.  |
| 15. | Nothing realized, case dismissed on decree-holder intimating generally that judgement-debtor and he had come to an understanding but without certifying that the understanding amounted to an adjustment of the decree.               | Wholly infructuous.   |
| 16. |   |   |



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|--|--|
| <p>At the close of ineffectual, or partially effectual, proceedings in execution, certificate of non-satisfaction transmitted to another Court under Section 39, Civil Procedure Code.</p> | <p>Disposed of by the transfer; or Satisfaction obtained in part.</p>  |
| <p>17. After ineffectual, or partially effectual proceedings, the case was transferred to the Collector under Section 68, Civil Procedure Code.</p>  | <p>[Disposed of by the transfer; or Satisfaction obtained in part.] [Result of proceedings in another Court or in the Collector's Court appears in the returns of those Courts, and not in the returns of the transmitting Court.]</p> |
| <p>18. Execution of decree enforced, both by attachment and imprisonment, but judgement debtor declared an insolvent and the attached property matter over to his assignee.</p>            | <p>Wholly infructuous.</p>   |

## Chapter XI

### Commissions

#### 1. General

#### 243.

(1) A commission may be issued for any of the purposes laid down in Rules 1, 4, 5, 2, 11 and 13 of Order XXVI, Civil Procedure Code. (2) Commissions may be issued by the Court of its own motion or on application, supported by affidavit or otherwise (except in the case of commissions under Rule 5 of Order XXVI for which applications are required). (3) The issue of a commissions is discretionary with the Court. A party applying for the issue of a commission is as much bound to do so without unreasonable or unnecessary delay as he is bound so to take any other steps in prosecution of the proceeding. The fact that an application has been made at an unreasonably late stage in the unit may, in the absence of adequate explanation for the delay, be sufficient reason for a refusal to issue a commission.

#### 244.

(1) If the application is granted the Court should, after consulting the parties or their pleaders and after taking into account the probable length of time the execution of the commission is likely to take, fix the amount of commissioner's fee, travelling expenses, etc., and direct payment of the same into Court within a specified time, and the commission shall not issue until and unless the sum so fixed by the Court is paid in full within the time limited therefor. If found necessary, the court may, from time to time, direct that any further sum be paid into Court by the party concerned. Note 1.-Order XXVI, Rule 15, requires that the expenses of commission should be paid into Court. Commissioners should not, therefore, accept any payment direct from the party but should draw their fee, travelling allowance, etc., from the Court. Note 2. - Great care should be taken by the Courts issuing commission to make the fees as little onerous as possible to the parties in the

suit.(2)Strict compliance with the orders regarding the deposit of commissioner's fee and other expenses should be insisted on and the time once fixed for the purpose should not be extended except on very good grounds.

**245.**

Before issuing the commission the Court should call on the party at whose instance the commission is granted to supply such copies of pleadings or abstracts thereof (if by reason of the length of the pleadings the Court permits the filing of abstracts and issues for the use of the commissioner as it considers necessary and should satisfy itself that all interrogatories, cross-interrogatories, maps, documents, etc., necessary for the execution of the commission have been filed.

**246.**

Every order for the issue of a commission shall fix a date allowing sufficient time for its execution and return. If for any reason the commissioner finds that the time so fixed is likely to be exceeded he should apply for its extension setting forth the grounds thereof and should intimate to the Court the date by which the commission is likely to be executed and returned.

**247.**

In every case the Judge shall record in the order-sheet of the proceedings of the" case, the reasons for issuing the commission and shall also indicate the same in brief in column 5 of the register of commissions issued (No. 11-28), e.g., if the witness to be examined resides at a distance of over two hundred miles from the Court-house the entry should be "over-two hundred miles", etc.

**248.**

Commission should not be executed piecemeal or at intervals. When the work of a commission has once begun it should be continued from day to day until it is completed, unless in exceptional circumstances an adjournment is necessary in which case the commissioner should at once inform the Court and seek its directions, if necessary.

**249.**

(1)When the commission is executed to the satisfaction of the Court the commissioner should receive the fees or remuneration fixed by the Court, but when the commission is not executed at all, or is not fully or satisfactorily executed, or the work turns out to be less than was expected, it will be in the discretion of the Court to direct a less amount to be paid or to make any other order in the matter which it thinks just and proper in the discretion of the Court to direct a less amount to be paid or to make any other order in the matter which it thinks just and proper in the circumstances.(2)In the case of a commission involving prolonged work, the Court may permit the commissioner to withdraw from time to time such sum as may appear necessary and reasonable on

account of fee, travelling expenses, etc. All such payments before the completion of the work shall be subject to the condition that if the commission is found not to have been executed satisfactorily, or if the work turns out to be less than was expected, the commissioner shall refund such sum as may be directed by the Court.

## **250.**

The selection of commissioners shall be made by the Judge himself and the order or appointment should be written in his own hand. The criterion for selection is efficiency but subject to this criterion efforts should be made to ensure a fair and equitable distribution. Commissions which can be suitably allotted to junior pleaders should be so allotted. Note 1. - All instances of dilatoriness or negligent and unsatisfactory work should be noted in the "Remarks" column of the register of commissions and commissions should not be given to persons whose work is found to fall below a reasonable standard of efficiency or punctuality. Note 2. - Court should maintain a statement of pleaders to whom commissions have been issued and District Judges during annual inspection should satisfy themselves that the distribution has been in accordance with the principles laid down above.

## **251.**

Commissions received from other Courts for execution should be entered in the register called the "Register of commissions received from other Courts (No. n-29). If no remittance is received with the commission and neither party appears to proceed with the case, inquiry should be made from the Court which issued the commission (through the original receiving court if that Court has delegated its functions to a subordinate Court) before proceeding with the commissions under Order XXVI, Rule 18, Civil Procedure Code.

## **252.**

Judicial officers are not entitled to receive any remuneration for executing commissions and no part of the fee received with the commission should, therefore, be accepted either personally or on behalf of Government. The execution of a commission is an official act which judicial officers are bound to perform when called upon to do so.

## **2. Commissions To Examine Witnesses**

## **253.**

When an application is made for the issue of a commission to examine witness the Court should satisfy itself-(a)that the application has been made bona fide, e.g., that it is not an endeavour to keep a particular witness out of the witness box;(b)that it has been made in reasonable time so as to avoid unnecessary delay;(c)that the issue upon which the evidence is required is one which the Court ought to try;(d)that the witnesses to be examined can give evidence material to the issue; and(e)that

there is good reason why they cannot be examined in Court in the usual way; and then exercise its discretion according to the particular circumstances of each case.

**254.**

Every order directing the issue of a commission for the examination of witness under Order XXVI, Rule 44 (see also Section 76, Civil Procedure Code), should state whether the commission is to be addressed to a Court or to a pleader.

**255.**

Commissions under Order XXVI, Rule 4 (2), Civil Procedure Code, for the examination of witnesses resident beyond the local limits of the Court's jurisdiction should ordinarily be issued to the Court within whose jurisdiction the witness resides.

**256.**

If a commission is to be issued to a pleader it should be transmitted together with the fee and other expenses to the Court in which; he is practising as such the Court receiving the commission shall be responsible for due and prompt execution thereof.

**257.**

The Court receiving the commission issued to a pleader should immediately deliver it to him, unless he cannot be found, or refuses to execute it. In such cases, either the writ should be sent back to the Court which issued it, or further instructions should be obtained without delay regarding the appointment of a fresh commissioner or the manner of execution.

**258.**

On receipt of a commission issued under Order XXVI, Rule 4, for the examination of a witness, the commissioner should determine whether he will execute it at the residence of the witness, or at some convenient place in the neighbourhood of the Court, or if the commissioner be a judicial officer, whether the witness shall attend in the Court or in the premises of the Court of such officer, proper arrangements being made, if necessary for due privacy. As a rule a person to be examined should attend the commissioner at the particular time and place specified in the notice issued but discretion should be exercised in the examination of those whose attendance is ordinarily excused, such as women, persons unable to be removed from their houses owing to old age, sickness or other bodily infirmity, or persons of rank exempted under Section 133, Civil Procedure Code, from personal attendance in Court. In such cases the commissioner should endeavour to discharge his duty with due regard to the special circumstances and condition of the witness.

**259.**

While evidence should not as a rule be excluded by the commissioner on debatable grounds, he is nevertheless responsible for preventing abuse of the right of cross-examination and for keeping it within reasonable limits.

**260.**

When a party fails to appear on the day and at the hour fixed for examination or applies for time, the commissioner should proceed ex-parte if he is of opinion that adjournment is sought on frivolous or unreasonable grounds.

**261.**

Unless otherwise directed by the issuing Court the commissioner should return the commission duly executed together with the evidence taken under it to the Court from which he had received it.

**3. Letters of Request for the Examination of Witnesses Residing Outside India**

**262.**

(1)The proper method of obtaining the evidence of a witness residing at any place not within India is by the issue of a letter of request addressed to the proper Court in the Foreign Country (Section 77 and Order XXVI, rule 5 and Form 8 in Appendix H of the Civil Procedure Code).(2)When the evidence of a witness residing at any place not within India is required by a subordinate Court, the letter of request alongwith necessary documents should be routed through the Registrar, High Court of the Madhya Pradesh, Jabalpur, the State Government and the Ministry of External Affairs, Government of India with a separate request for the transmission of the letter of request through the appropriate authorities.(3)Subordinate Courts having any doubt about the legality or appropriateness of issuing a commission or letter of request to any country should first address the Registrar, High Court of Madhya Pradesh, Jabalpur.(4)Where special arrangements exist with any country, the procedure prescribed in the arrangements should be followed.(5)The procedure to be followed in the case of particular countries or territories is given in Appendix I.

**263.**

(1)Letters of request should always set forth the following(a)the names of the parties to the proceedings, with an indication of the nature of the action in which the evidence is required;(b)the names, addresses and descriptions of the witnesses whose evidence is desired;(c)either (i) the exact interrogatories which it is desired to put to the witnesses, or the documents, etc., whose production is desired, or (ii) a clear and concise explanation of the exact points on which it is desired that the witnesses should be examined, or (iii) a request that notice should be given to the representatives of

the parties to the action of the time when and of the place where evidence is to be taken, and that representatives of the parties should be allowed to put such questions to the witnesses as they may desire.(2)A translation of the letters of request and of the interrogatories and of all accompanying documents into the language of the country in which the witness resides must be furnished by the litigants. Two copies of such translations are sometimes necessary and in all cases convenient. If documents are sent they should be accompanied by a descriptive list thereof.Note. - Letters of request and accompanying documents should be sewn together in a parchment paper cover down the left hand side, the ends of silk, tape or thread with which they are sewn being brought out on to the front cover and the ends scale down with the Court seal.(3)Foreign Courts should not be asked in the letter of request to name and appoint expert to give evidence, or themselves to collect evidence.(4)When it is not possible to ascertain the particular foreign Court to which the letter of request should be addressed, the name of the Court may be left blank so as to be filled in by the Registrar, High Court of Madhya Pradesh, or the Indian representative in the foreign country.(5)It is to be noticed that in letters of request it is not proper to fix a day for the return of the evidence. When it is known that neither party proposes to attend at the taking of the evidence, this should be stated in the covering letter forwarding the letter of request, as it may avoid delay.(6)Neither commissions nor letters of request should be ordered to issue abroad unless there is sufficient time for the execution to be completed before the hearing of the cause or matter in which the evidence is to be used.(7)Foreign Courts will not usually charge any fees .for their service in executing letters of request, but they are entitled to the repayment of any out-of-pocket expenses actually incurred in obtaining the evidence for the Indian Courts. The letter should, therefore, before they issue a letter of request, take such steps as are necessary to ensure that they will be able to meet and defray any proper claim by a Foreign Court for such out-of-pocket expenses, and the Secretary, Ministry of External Affairs, will desire to be informed that this has been done before he forwards the letter of request through the diplomatic channel.

#### **4. Commissions For Local Investigation**

##### **264.**

(1)The responsibility of ordering an inquiry under Order XXVI, Rule 9, rests entirely with the Court before whom the case is pending. Such Court may order such inquiry when it deems a local investigation to be necessary or proper for the purpose of elucidating the matters in dispute or of ascertaining the amount of mesne profits or damages or annual net profits. A commission for local investigations to issue only when such investigation cannot be conveniently conducted by the Judge in person and when the matter in issue cannot be determined by taking evidence in the ordinary way.(2)When an application is made for the issue of a commission for local investigation, the Court in exercising its discretion should satisfy itself-(a)that the application has been made bona fide, e.g., that it is not the intention of the applicant to protract the litigation and to harass the other party by putting him to unnecessary expense;(b)that the application has been made at the earliest opportunity;(c)that the nature of the case calls for that particular mode of inquiry;(d)that the importance of the case warrants that expense being imposed on the parties; and(e)that such inquiry is not likely to be attended with delay which will counter balance the advantage to be gained from it.

**265.**

(1)An order for local investigation should be drawn up by the presiding Judge himself and it should clearly state the points which require elucidation or ascertainment in particular way and why such matter could not be proved or ascertain the ordinary way by producing documents at the proper time and witnesses at the trial. It should also clearly specify the point on which the report of the commissioner is required.(2)The commissioner should strictly limits his inquiry to, and submit his report on, the points specified in the commission and should inquire into any other points even at the request of the parties.Note. - It should be remembered that the Court has no power to delegate to the commissioner the trial and determination of any issue in the case between the parties.

**266.**

A commission for local investigation may be issued to a pleader or a Government official or to a private individual as the circumstances of the case may require. In appointing a Government official the Court is bound to follow the rules framed by the State Government under Order XXVI, Rule 9, Civil Procedure Code.Note. - See Appendix I for the rules framed by the State Government. These rules are not reproduced by the High Court under these rules, hence they are given at the end as 'APPENDIX I' for facility of reference.

**5. Commissions for Taking Accounts****267.**

(1)When it is found necessary to take an account the order or the preliminary decree of the Court should contain the following directions with such variations as the particular circumstances of the case may be, in the opinion of the Court, require-(a)The nature of the account to be taken.(b)The date from which and the date to which the account is to be taken.(c)The name of the party by whom a statement of account is to be filed.(d)Whether the commissioner is only to transmit the proceedings which he may hold on the inquiry or is also to report his own opinion on the point or points referred for his examination (Order XXVI, Rule 12).(e)The date on which the commissioner is to submit his report.(f)Any other matter on which the Court may think it necessary to give instructions.(2)The statement of account should be in the form of debtor and creditor account and should be verified by the accounting party or his agent.(3)The statement of an objection to an account or to the report of the commissioner should clearly specify the items to which objection is taken, the grounds of each objection and the balance, if any, admitted or claimed to be due. It should also be verified by the affidavit of the party concerned or his agent.(4)If the commissioner is unable to submit his report within the time fixed by the Court he should apply to the Court for an extension of the time giving reasons thereof and the Court may extend the time or cancel the commission and appoint a new commissioner.(5)After the evidence has been duly taken and the parties have been heard the commissioner shall submit his report to the Court. If he is empowered under Order XXVI, Rule 12 (1), to state his opinion on the points referred to him he shall append to his report schedules setting out (a) the contested items allowed or disallowed, (b) the reasons for allowing or disallowing

them, (c) the amount found due, (d) the name of the party to whom it is due, and (e) the name of the party by whom it is due.

**268.**

A commission for examination of accounts should ordinarily be issued to a banker or other person versed in the business to which the accounts relate.

## **Chapter XII**

### **Incidental proceedings**

#### **1. Temporary Injunctions**

**269.**

The attention of the Courts is drawn to Order XXXIX, Rules 1 to 5, Civil Procedure Code, which state the general powers of the Courts and the general conditions under which a Court may grant a temporary injunction.

**270.**

Temporary or interim injunction should in practice be granted ex-parte only in very exceptional circumstances. Generally they should never be granted unless the plaintiff fully satisfies the Court that in spite of all reasonable diligence it is inevitable that he should apply behind the back of the defendant. If such injunctions are granted they should only hold good for the minimum time required for the defendant to appear before the Court to show cause against the injunction. The greatest care should also be taken to state in precise terms the particular acts which are forbidden.

**271.**

A copy of the plaint and affidavit should be served on the defendant and he should be allowed a few days' time for filing his affidavit in reply. The plaintiff in like manner may, if necessary be given a very short time for filing his further affidavit, if any, and a date for hearing the application should be fixed accordingly. The Judge should then dispose of the application on the date so fixed but in case it be found necessary to adjourn the hearing the Court should, in the presence of the defendant, make an order covering the adjournment period but covering it only to an extent which is absolutely necessary in the particular circumstances of the case. Note 1. - It must be realized that the granting of an ex-parte injunction involves a serious responsibility and if it is granted the Judge must take the greatest care to do every thing possible to protect the defendant. Note 2. - Ex-parte injunctions may be granted with greater freedom if the party seeking it agrees to be put on terms, viz., to pay all consequential loss caused if, in the event, it should prove that the injunction should not have been asked for.



**272.**

At the time of their inspection of the subordinate Court the District Judges should carefully examine whether the Courts have handled injunction matters in a reasonable manner and in accordance with the legal principles. The materials upon which ex-parte injunctions have been granted should be specifically scrutinized and, if they are found to be insufficient, the fact should be explained to the Judge concerned. In particular it should be ascertained whether any opportunity was afforded to the defendant of being heard and whether any order made ex-parte was limited so as to take effect only for a specific period. These matters should also be examined while disposing of appeals.

**273.**

In a suit instituted under Order XXI, Rule 63, by a person against whom an order has been made on a claim or objection preferred under Order XXI, Rule 58, no injunction ordering the stay of execution should be issued save where the Court is satisfied that the order on the claim or objection petition is *prima facie* wrong or indefensible.

**273A. [ [Inserted by High Court Notification No. 5410-A-CH-12, dated 16-4-1974, Published in M.P. Rajpatra, Part 4 (Ga), dated 1-11.1974, Page 487.]**

(1) Interlocutory injunctions are sometimes granted too freely and without sufficient care to impose terms. With reference to such matters care should always be taken not to place a plaintiff in a position of unfair advantage by the judicious issue of an ex-parte order. (2) In dealing with application for temporary injunctions the Courts should be guided by the following principles :- (i) Plaint and affidavits should be critically examined and the Courts should satisfy themselves that there has really been an invasion of rights sufficient to justify interference. (ii) The Courts should appreciate that an interlocutory injunction should be granted ex-parte only in very exceptional circumstances and ordinarily only in cases in which the applicant establishes that by no reasonable diligence on his part, could he have avoided the necessity for making the application. In this connection attention is invited to Rule 3 of Order 39, Civil Procedure Code, which directs that the notice "Shall" be given unless the emergency is so grave that notice will defeat the object of the injunction. Particular care should be taken in dealing with the applications for temporary injunctions against local bodies and similar institutions. (iii) Temporary injunctions when granted should ordinarily be limited to hold good only for the minimum time required for the defendant to appear before the Court to show cause against the injunction. (iv) When granting such an injunction the greatest care should be taken to state in precise terms the particular acts which are forbidden. A vague and general order that the application for injunction is granted should never be recorded. Without such specific directions injunction orders are frequently drawn up by, copying out a long rumbling statement from the plaint or application for injunction. (v) The defendant should be served with copies of the plaint and affidavit and should be allowed a few days thereafter within which to appear and object. The presiding Judge should ordinarily dispose of the application on the date so fixed and adjournments should be very sparingly granted. It is of the utmost importance that injunction applications should be heard and determined with the greatest expedition. (3) What is

contained in the foregoing paragraphs is not intended to restrict the discretion of Courts under the Code, but is intended to stress the desirability of adhering to the general principle that temporary injunctions should not be granted unless very strong and cogent grounds are made out.]

## **2. Arrest or Attachment Before judgement And Withdrawal of Suits**

### **274.**

If at the time of filing a suit or at any stage afterwards an application is made by the plaintiff for the arrest of the defendant or for the attachment of his property before judgement under Order XXXVIII, Rules 1 and 5, the Court must be satisfied not only that the defendant is about to abscond or dispose of his property or remove it from the jurisdiction of the Court, but that his object is to obstruct or delay the execution of any decree that may be passed against him. It should be remembered that the jurisdiction of the Court in these matters should be carefully and sparingly used and ex-parte orders passed in very exceptional circumstances. Greater caution should be exercised when movables are sought to be attached or when the attachment will have the effect of closing down a business.

### **275.**

A plaintiff is at liberty to withdraw from a suit at any time (subject to any order as to costs that the Court may pass), but if he wishes to reserve his right to bring a fresh suit on the same cause of action he must obtain the permission of the Court under Order XXIII, Rule 1, 'Civil Procedure Code. Permission can be granted only when the Court is satisfied that (a) there is some formal defect fatal to the suit, or (b) other sufficient grounds are present. Note 1. - The object of the rule is to prevent a defeat of justice on technical grounds and not to enable a plaintiff after he has failed to make out his case, to obtain an opportunity of re-opening the dispute at a future period. Courts should, therefore, be careful to see that the allegation of the existence of a formal defect is not mere pretext to get out of an inconvenient or ill-advised litigation with a right reserved to harass the defendant on another occasion. Note 2. - Withdrawal from claim under sub-rule (3) of Order XXIII, Rule 1, should be recorded in the order-sheet only, but when withdrawal is made under sub-rule (2), with the leave of the Court to bring a fresh suit, it may be recorded either in the order-sheet or as a separate order.

## **3. Appointment of Receivers**

### **276.**

The attention of the Courts is drawn to Order XL, Rule 1, Civil Procedure Code, under which they have discretion to appoint a receiver of any property either before or after decree. They may make use of that power in execution of a decree where the property in respect of which a receiver is to be appointed is large enough to render such appointment useful. Ordinarily a receiver should not be appointed in respect of small properties the income of which is not sufficient to bear the extra costs of the appointment.

## **Chapter XIII**

### **Appeals and remand**

#### **277.**

All memorandum of appeal should be presented during the Court hours to the Court or such officer as it appoints in this behalf under Order XLI, Rule 1 (1), either by the party in person or his "recognized" agent, within the meaning of that term in Order III, Rule 2, Order XXVII, Rule 2, and Section 85, Civil Procedure Code, or by a duly appointed pleader. Note. - The officer, if any appointed under Rule 37 should be the officer to be appointed under this rule.

#### **278.**

(1) As required by Order XLI, Rule 1 (2), every memorandum shall set forth concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative and such grounds shall be numbered consecutively. If the memorandum be not so drawn up the Court may, under Order XLI, Rule 3, either reject it or direct its amendment then and there or return it to the appellant for the purpose of being amended within a time to be fixed by it. The memorandum should also state the valuation of the appeal for the purpose of Court-fee and jurisdiction and if it does not, the Court may direct that it be amended. It should further contain a statement indicating the provision or provisions of law under which the appeal is preferred. (ii) Every memorandum of appeal, memorandum of objection and petition for revision shall state the relief sought. Note. - There is a strong tendency on the part of parties and their pleaders to disregard the provisions of Order XLI, Rule 1 (2), and it should be checked by the Courts by a judicious exercise of the powers conferred upon them by Rule 3 of the same order.

#### **279.**

The attention of the Courts is drawn to Order XLI, Rule 1 (1) Civil Procedure Code, which lays down that every memorandum of appeal shall be accompanied by a copy of the decree appealed from. The presentation of memorandum which is not so accompanied is not, therefore, a valid presentation.

#### **280.**

If an appeal is presented beyond the prescribed period of limitation and the appellant prays for an extension of time under Section 5 or for extension of time under Part III of the Indian Limitation Act, 1908, and there appears to be prima facie ground for granting his prayer, a notice should be issued to the respondent requiring him to show cause why the appeal should not be admitted. Note. - When an appeal is presented after the period of limitation, it should be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within time.

**281.**

The date for hearing an appeal shall be fixed so as to allow sufficient time to every respondent to give notice of any objection he may intend to take to be decree as required by Order XLI, Rule 22, Civil Procedure Code.

**282.**

Every notice to a respondent under Order XLI, Rule 14, should be accompanied by a copy of the memorandum of appeal [Order XLI, Rule 14 (1)J, read with the Order V, Rule 2, Civil Procedure Code].

**283.**

The attention of the Courts drawn to sub-rule (3) of Order XLI, Rule 14, Civil Procedure Code, as amended, which lays down that an appellate Court may in its discretion dispense with notice to any respondent against whom the suit was heard ex-parte.

**284.**

Applications or interlocutory appeals complaining against the conduct of, or prejudice on the part of, the presiding officer of the lower court should be carefully scrutinized before admission. These are often filed with a view to gain time and their object is fulfilled if the suit or proceeding is ordered to be stayed until their disposal.

**285.**

Appeals against interlocutory orders which hold up the progress of suits or proceedings in lower Courts should be given precedence over all civil work other than that of a specially urgent nature and every endeavour should be made to dispose of such appeals quickly. Instructions by High Court. - [1] Vide Memo No. 5082/11-15-49/41, dated 18-9-1941 and recirculated vide Memo No. 3527 dated 11-5-1955. - If a pending case is requisitioned by High Court, without mentioning any date, it need not be sent immediately, if the hearing of the case is due to take place a few days after. Record should be sent after hearing is over. Doubtful cases should be referred to Registry. [2] Vide Memo No. 10339 dated 24-10-1972 & Memo No. 15779 dated 15-11-1975. - Whenever record is requisitioned by a Court of appeal or revision in connection with an injunction, only papers directly concerned with the injunction should be sent, after taking them out of the file. The entire record of the suit should not be sent, unless specifically asked for by the superior Court.

**286.**

It is the duty of the District Judge to watch closely the disposal of appeals and to see that the old appeals are not allowed to lie about untouched in any Court while later appeals are being disposed

of. Every effort should be made to prevent, as far as possible, any accumulation in the appellate file.

**287.**

When the lower Courts has committed to frame or try any issue or to determine any question of fact, which appears to be appellate Court essential to the right decision of the suit upon the merits, the appellate Court should not reverse the decree, but should proceed under Order XLI, Rule 25 or Rules 27 to 29, Civil Procedure Code. The intention of the Court is that when there is an appeal that appeal, if possible, dispose of the case.

**288.**

When a case is remanded for a trial of issues or for the taking of additional evidence, a date for the further hearing of the appeal should invariably be fixed. If the remand is under Rule .25, a definite time, subsequent to the return of the record to the appellate Court, should be allowed within which the parties may file a memorandum of objections to the findings. If no definite period has been allowed for the filing of a memorandum of objections, the appellate Court should either postpone the hearing of the appeal, or should ascertain and record the objections of the parties or either of them, or should ascertain and record that neither party has any objections to advance.

**289.**

When cases remanded by the High Court, either for findings or for further evidence, are detained by the lower Court for a longer period than three months from the date of the order of remand an explanation of the cause of the delay should be submitted to the High Court.

**290.**

(1)When an appellate Court remands a case under Order XLI, Rule 23, or refers a case under Rule 25 it shall fix a date for the parties to appear in the lower Court.(2)When the High Court remands or refers a case, the Court to which it is so remanded or referred shall fix a date for hearing and intimate the same to the parties at their registered address or to their pleaders.

**291.**

The Court to which reference is made under Order XLI, Rule 25, for trial of issues, should, while returning its findings, certify at the foot thereof the amount of costs (showing the items in detail) incurred by each of the parties to the case at the re-trial so that such costs may be provided for in the decree that may be finally passed by the appellate Court.[5] No. 4587. - In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of the Madhya Pradesh Civil Courts Act, 1958 and all other powers enabling, and in supersession of the existing rules in force in Civil Courts in any part of Madhya Pradesh on the concerned subject, the following rules relating to classification of Records, Arrangement and Preparation of Records during trial and their

transmission to the District Record Room, custody, Preservation and Destruction of Records and Inspection of Records have, with the previous approval of the Governor, been made by the High Court of Madhya Pradesh, Jabalpur and are published for general information. Rules And Orders (Civil)

## Part II – Records

### Chapter XIV

### Classification of records

#### 292.

The records of judicial proceedings, whether suit or cases other than those of-(a)Small Cause Courts, and(b)Courts invested with the jurisdiction of a Court of Small Causes when exercising that jurisdiction, and divided into four classes. This classification relates only to the preparation and preservation of records, and does not affect any other classification of suits or cases for the purpose of registration, returns or statements.

#### 293.

Class I includes records of-(a)Suits for, or affecting immovable property including suits under the Transfer of Property Act, 1882, and Order XXXIV, Civil Procedure Code, for foreclosure, redemption or sale. Note. - Suit under Section 9 of the Specific Relief Act, 1877, should be included not in this class, but in class III.(b)Suits in respect of the succession to an office, or to establish or set aside an adoption, or otherwise determine the status of an individual.(c)Suits relating to public trusts, charities, endowments, public or general rights, or customs and other matters of public or general interest.(d)Suits in which any question relating to a title to land or to some interest in land as between parties having conflicting claim thereto is in issue.(e)Suits for a declaration of a right to maintenance with or without a charge on immovable property or to determine the rate thereof.(f)Cases in which a question of title to immovable property is decided under Section 4 of the Provincial Insolvency Act, 1920. Note. - The record of the miscellaneous judicial case under Section 4 of the Act only and not the whole record of the insolvency proceedings should be classified in class I.(g)Cases under the Musalman Wakf Act, 1923.

#### 294.

Class II includes records of-(a)Suits and cases for probate and letters of administration, and for revocation of the same.(b)Cases under the Guardians and Wards Act 1890, relating to guardianship of minors and the administration of their property.(c)Cases under the Indian Lunacy Act, 1912, relating to the guardianship of lunatics and the care of their estates. Note. - An application by an executor or administrator or by guardian of a minor or lunatic to sell, mortgage, etc., property belonging to the estate is an application in the case, and, together with all proceedings connected

with it must form part of the record of the case.(d)Cases under the Indian Succession Act, 1925, except those under Part Vin of the Act.

## 295.

Class III includes records of-(a)Suits for the recovery of arrears of maintenance.(b)Suits, with or without ancillary reliefs, for dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal rights.(c)Suits under Section 9 of the Specific Relief Act, 1877.(d)Cases against legal practitioners for unprofessional conduct or for practising in Courts without necessary certificate.(e)Cases under Section 83 of the Transfer of Property Act, 1882.(f)Applications under the Indian Trusts Act, 1882.(g)Applications under sub-sections (3) and (5) of Section 16 of the Indian Telegraph Act, 1885.(h)Cases under Parts III and IV of the Land Acquisition Act, 1894.(i)Applications by the Collector to the District Judge or proceedings taken by the District Judge of his own motion under Section 61 of the Indian Stamp Act, 1899.(j)Cases under the Code of Civil Procedure, 1908, for transfer of a decree when no application for execution is pending.(k)Applications to sue in forma pauperis, if rejected.(l)Cases in which plaints have been rejected or returned for presentation to the proper Court.(m)Cases in which plaints have been withdrawn with permission to file a fresh suit.(n)Cases in which memoranda of appeal have been rejected or returned for presentation to proper Court.Note. - Proceedings under the Civil Procedure Code for restoration of a suit or appeal or for a review of judgement or proceedings in the suit or appeal must form part of the record of the suits or appeal.(o)Petitions or applications under the Companies Act, 1956.(p)Applications under Section 25 (2) of the Central Provinces Land Alienation Act, 1916.(q)Petitions for adjudication as insolvents.(r)Cases under Section 3 of the Charitable and Religious Trusts Act, 1920.(s)Cases under Part VII of the Indian Succession Act, 1925.(t)Applications under Section 14 of the Central Provinces Local Fund Audit Act, 1933(u)Cases under Section 3 of the Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act, 1936.(v)Cases under Section 26 of the Madhya Pradesh Public Trusts Act, 1951.(w)Proceedings against witnesses and proceedings under sub-section (2) of Section 18A of the Workmen's Compensation Act, 1923.(x)All other suits which are not included in class I or class II.(y)Such other cases as the High Court may, from time to time, direct to be included.Note. - The list of miscellaneous judicial cases contained in Rule 372 is compiled for purposes of registration and not of classification. Miscellaneous judicial cases not included in the preceding rules will form part of the parent record and the papers forming them will not be collected separately except in the case of those miscellaneous judicial cases for which a separate order-sheet is prescribed. Orders governing these cases will be found in Rule 319.

## 296.

Class IV includes records of-Proceedings in execution of decrees.Note. - Under law all such proceedings are proceedings in the suit and must be entitled as such, but for the purpose of arrangement and ultimate disposal of the record, each application for execution shall be treated as a separate case and the record thereof shall include all papers connected with the execution.

## **Chapter XV**

### **Arrangement and preparation of records during trial and their transmission to the district record-room**

#### **I. Arrangement of Records**

#### **297.**

Every record under class I shall consist of five files to be styled and marked, respectively, File A, File A-1, File C-1, File C-2 and File D.

#### **298.**

File A shall contain the following papers which shall be arranged the following order-(a)Table of contents.(b)Plaint or application or statement of particulars relating to wakf (under Section 3 of the Musalman Wakf Act, 1923), together with any schedule annexed thereto.(c)Order for and further particulars relating to wakf (if any).(d)Petition of compromise if given effect to in the decree.(e)judgement or final order.(f)Preliminary and the final decree.(g)Finding returned to the appellate Court under Order XLI, Rule 25, Civil Procedure Code.(h)Copy of judgement, decree or order (if any) passed in appeal or revision.(i)Any other papers which the presiding Judge may, for reasons to be recorded, order to be placed in File A.

#### **299.**

File A-1 shall contain-(a)Table of contents.(b)Order-sheet.(c)Summons, notice or order with return thereto on the basis of which an ex-parte decree is passed against the defendant.(d)Application for further particulars relating to wakf.(e)Written statements of parties and the Judge's record of admission or denial, if any.(f)Interrogatories and their answers.(g)Memorandum of issues.(h)Award of arbitrators if given effect to in the decree, the return or report, map and field-book if referred to given effect to in the decree.But no portion of the evidence taken by the commissioner also, in the case of minor or lunatics, may order of the Court sanctioning a compromise as beneficial to the minor or lunatic.(i)Statement of accounts relating to wakf.(j)Order, if any, for administration or for partition or for accounts or inquiry together with the direction given, if any.(k)Evidence returned to the appellate Court under Order XLI, Rule 25, Civil Procedure Code.(l)Warrant of attachment before judgement, if any.

#### **300.**

File C-1 shall contain-(a)Table of contents.(b)Lists of documents admitted in evidence together with admitted documents.(c)Oral evidence.



**301.**

File C-2 shall contain-(a)Table of contents.(b)Registered addresses.(c)Power of attorney, memoranda of appearance, certificates of fees paid to the pleaders and all other papers and petition including those relating to proceedings incidental to the suit or case and not specified as included in any other file.(d)Affidavits.

**302.**

File D shall contain-(a)Table of contents.(b)All summonses, process and returns thereto, except the summons or notice with returns thereto, as is mentioned in Rule 299 (c), lists of witnesses, lists of documents filed by parties, petitions relating to the attendance of witnesses or adjournments, proceedings calling for or sending papers or records.

**303.**

Records of class II shall consist of two files to be styled and marked File B and File D. File B shall contain the papers specified as included in Files A, A-1, C-1 and C-2 of class I. All other papers shall be filed in File D.

**304.**

Every record under class III shall consist of two files to be styled and marked File C and File D. File C shall contain the papers specified as included in Files A, A-1, C-1 and C-2 of class I. All other papers shall be filed in File D.

**305.**

The papers in File C of class II and those in File C of class III shall be arranged in the following manner :-(a)Table of contents.(b)Order-sheet.(c)Plaint or application together with a schedule annexed thereto.(d)Summons, notice or order with the returns thereto on the basis which the case is decided ex-parte.(e)Written statements of the parties and Judge's record of admission or denial.(f)Interrogatories and their answers.(g)Memorandum of issues.(h)Award of arbitrators or petition of compromise if given effect to in the decree or order, commissioner's return or report together with the map and the field-book, if any, but not the evidence taken by him and in the case of minor or lunatics, order of the Court sanctioning a compromise as beneficial to the minor or lunatic.(i)Order, if any, for administration or for partition or for accounts or inquiry together with the directions given if any.(j)judgement or final order.(k)Preliminary decree and final decree.(l)Evidence and findings, if any, returned to the appellate Court under Order XLI, Rule 25, Civil Procedure Code.(m)Copy of the judgement, decree or order, if any, passed in appeal or revision.(n)Lists of documents admitted in evidence together with the admitted documents.(o)Oral evidence.(p)Registered address.(q)Powers of attorney, memoranda of appearance, certificates of fees paid to the pleaders and all other papers and petitions including those relating to proceedings

incidental to the suit or case and not specified as included in any other file.(r)Any other paper which the presiding Judge may, for reason to be recorded in writing, order to be placed in File B or File C, as the case may be.

### **306.**

(1)Every record under class IV shall, except as provided in sub-rule (2) consist of one file to be styled and marked File C which shall contain all the papers relating to the case.(2)If the application is for execution of a decree passed in a suit of Class I and a question is determined to the construction of the decree or its effect as regards all or any of the parties thereto, or if possession of immovable property is given in pursuance of the decree, the record shall, as soon as the application is finally disposed of, be diverted into two files to be styled and marked File A and File C. File A shall contain(a)Table of contents.(b)Order-sheet.(c)Application for execution.When a question as to the construction or effect of the decree is raised and determine-(d)Petition raising any question as to the construction or effect of the decree and any counter-petition.(e)judgement or order of the Court on such question.(f)Copy of the judgement or order passed in appeal or revision. When possession of immovable property is given in pursuance of the decree-(g)Warrant for delivery of possession with Nazir's report thereon.File C shall contain all other papers.

### **307.**

The records of Courts of Small Causes including those of proceedings in connection with the execution of the decree shall consist of only one file.Note. - The record of proceedings in execution of a decree disposed of and deposited in the record-room after the expiry of twelve years from the decree should be treated as a separate record.

### **308.**

The record of an appellate Court shall be arranged in the same way as that of the Court of first instance except that there shall be no C-1 File in respect of the records of class I. The papers pertaining to Files C-1 and C-2 shall be placed together in File C-2. Copies of judgement and decree filed with the memorandum of appeal shall be placed in File D.

### **309.**

The splitting up of the record and the distribution of the papers into the proper files must in all cases be made immediately after the first hearing and shall be continued from day as the case proceeds. Pleadings, Judge's record of admission or denial, applications and proceedings in every suit or case shall be arranged in their respective files in the order in which they are brought before the Court or made. The arrangement of pleadings and the Judge's record of admission or denial into separate groups is prohibited. Depositions of witness shall be arranged in the order in which they are made.Note. - The distribution of papers into proper files must in all cases be complete before the record is deposited in the record room. This will avoid the necessity of sorting out papers in

record-room and will enable the record keeper to know at once, by reference to the letter on the file, and without opening any file, can be destroyed at any given time.

### **310.**

Pleadings, statements of parties or of pleaders and other papers in the records of Courts of Small Causes shall be arranged in the orders in which they are filed or made before the Court.

## **2. Title Page**

### **311.**

Each file of every record under classes I, II and III shall have prefixed to it a title page in Form Nos. 11-136-142. The title page will be the following colours :-File A-White.File A-l-Green.File B-Red.Files C, C-l and C-2-Yellow.File D-Blue.

### **312.**

Each record of a Court of Small Causes shall have prefixed to it a title page in Form No. 11-145. The title page will be coloured white.

## **3. Table Of Contents**

### **313.**

The appropriate form of "Table of Contents" -(Forms 11-146-149) shall be prefixed to each file.

### **314.**

Every record of a Court of Small Causes shall have a table of contents printed on the inner side of the title page (Schedule No. 11-145).

### **315.**

Exhibits should not be paged and shown in the table of contents. The lists which are attached to them should alone be shown in the table and should bear serial and sheet numbers.

### **316.**

If any paper is transferred from one file to another the fact should be noted in the remarks column of the table of contents of the files from, and to which, the paper is transferred. A new sheet number and, if necessary, a new serial number should be given in the table of contents of the file to which

the paper is transferred.

#### **4. Order-Sheet**

##### **317.**

An order-sheet in Form Nos. 11-155 and 11-156 shall be attached to the record of each case, whether original or appellate. For the records of the Courts of Small Causes an order-sheet in Form 11-156 may be issued, when necessary.

##### **318.**

The order-sheet should clearly show the course of a suit or case from first to last in chronological order. It shall contain a note of every order made and shall show the date of, and the proceedings at, every hearing. It should be faithful, complete and concise history of the case and of all proceedings taken on it. It shall show, among other matters the dates on which the plaint or written statements were filed, issues were recorded or amended, witnesses examined and the hours between which they were examined, the date of the delivery of judgement, of the signing of the decree, and of any application for review of judgement, for amendment of the decree, or for final decree. It shall contain in chronological order all proceedings subsequent to the passing of a preliminary decree, if any, and shall also contain a note of other proceedings, such as the reading of the deposition of a witness examined on commission, the recording of a commissioner's report and the objection made thereto, if any, and also the reasons for admitting or rejecting evidence whenever the validity of the order for admission or rejection is contested. If witnesses are in attendance and the case is adjourned their presence should be noted in the order sheet.

##### **319.**

A subsidiary order-sheet with separate table of contents shall be opened for the following matters :- (i) Application for the execution of a decree. (ii) Miscellaneous Judicial case under items (5), (6), (8), (9), (10), (11), (17), (18), (22), (24), (34) or (42) of Rule 372. (iii) Miscellaneous Judicial case under item (41) of Rule 372 when not connected with suit or proceeding pending before a Civil Court or with a suit registered under Sections 20 (2) and 14 (2) of the Arbitration Act, 1940. (iv) Application under Rule 2 (3), Order II, of the Code of Civil Procedure, 1908. (v) Proceedings under Section 4, 53 or 54 of the Provincial Insolvency Act (V of 1920). (vi) Application under Section 76 (2) or 88 of the Indian Lunacy Act (IV of 1912). An entry of the opening of a subsidiary order-sheet shall be made in the order-sheet of the main case. Papers other than papers which belong to a 'D' File relating to a miscellaneous judicial case will be grouped together under the subsidiary order-sheet. It will be convenient to bind the whole in a sheet of cartridge paper 19" x 1/2", bent double.

**320.**

No judgement may be written in the order-sheet. Orders, the reasons for which require to be recorded in length, must not be written in the order-sheet, but not of the order and of the date on which it was made, should be entered in it. The practice of writing orders on petitions, reports, etc., is prohibited.

**321.**

Necessary entries in the order-sheet shall be made by the presiding officer as the case proceeds. Entries of a simple and routine nature may, however, be made by the Court clerk under the supervision and direction of the presiding officer but the presiding officer must carefully scrutinize the entries before signing them and will, in all cases, be responsible for their correctness. All entries shall be signed with the usual signature of the presiding officer.

**322.**

Orders fixing dates or adjourned dates for hearing, or directing anything to be done by the parties or their pleaders, should be signed them and thereby the parties or their pleaders.

**5. Documents****323.**

(1) All documents tendered in evidence shall be accompanied by a list in the following form : Court of..... Suit No..... of..... List of documents produced on behalf of plaintiff (or defendant). This list is filed by..... on.....

Serial No.	Description of document	Date of document	Whether original or copy	Remarks	Signature of party or pleader for document rejected with date
(1)	(2)	(3)	(4)	(5)	(6)

Note 1. - Columns (1) to (4) should be filled in by the person who files the list. Note 2. - If any document is torn, worm-eaten or damaged in any way a clear note to that effect must be made in the list and any such document shall be brought to the notice of the Judge by the ministerial officer whose duty it is to receive it. (2) As soon as the list is filed the Reader will endorse on the back of each document the particulars mentioned in clauses (a), (b) and (c) of Rule 4 (1), Order XIII, Civil Procedure Code. A specimen form of endorsement is shown below : A.B. v. C.D. Suit No. 2 of 1990 Filed by plaintiff on 9th January, 1990 Note. - Occasionally documents are produced which are of great historic or antiquarian value, such as old sanads or grants and such documents may be seriously injured by the usual endorsements. It is important that the identity of a document produced in Court and acted upon should be placed beyond question in view of possible appeal or of possible future proceedings. But where a document of historical or antiquarian interest is in

question the Court before which it is produced should make every possible endeavour to prevent its being defaced by marks of any kind. Some means of avoiding disfigurement will generally suggest themselves. The parties may agree to a photographic copy being substituted for the original, or the document may be enclosed in a sealed cover, or in a locked and sealed box, the necessary particulars being endorsed on the outside. If other means fail careful measures should be taken for the safe custody of the document pending instructions from higher authority.

### **324.**

If any document presents a suspicious appearance, a note of it should be made in the list as well as in the order-sheet and if the Court sees sufficient cause it may impound the document under Order XIII, Rule 8. If any document appears to have been executed on unstamped or insufficiently stamped paper, action should be taken under Sections 33 and 35 of the Indian Stamp Act, 1899. (In this connection attention is invited to paragraphs 9-11 of Appendix V).

### **325.**

(1) Cumbersome and bulky documents such as account books etc., which cannot conveniently be attached to the record may be kept separately either in a piece of cloth or in a box or almirah as may be found convenient, but the list accompanying them should be kept with the record and not with the documents. (2) When an entry in an account book is admitted in evidence, the portion so admitted shall be clearly indicated by surrounding it in red ink.

### **326.**

Order XIII, Rule 5, provides for the substitution of copies for originals in the case of (1) letter books or shop books or accounts in current use, and (2) public records; and it gives precise instructions for the proving of these copies and their comparison with the originals. Whether the books, accounts or records are produced on behalf of a party or in obedience to an order of the Court acting of its own motion, a copy of the entries which are relevant to the case should invariably be required to be furnished so that the proceedings may be complete in themselves.

### **327.**

As soon as a document is admitted in evidence the endorsement referred to in Rule 323 (2) should be completed and signed by the Judge. Specimen forms of completed endorsements are as shown below :- A.B. v C.D. Filed by plaintiff on 8th January, 1990. Admitted by defendant No. 1, Ex. P-1 (Signature) Judge A.B. v. C.D. Suit No. 2 of 1990 Filed by plaintiff on 9th January, 1990. Public document. Ex. P-2 (Signature) Judge Dated the 1st April, 1990. A.B. v C.D. Suit No. 2 of 1990 Filed by plaintiff on 9th January, 1990 Proved by..... Ex. P.-3. (Signature) Judge Dated the 1st April, 1990. Note. - Before a document can be used as evidence it must be either proved or admitted in the manner laid down in Chapter V of the Evidence Act. It is necessary to point out that the term "proved" in this Chapter does not mean conclusively proved but proved unless and until disproved.

The signature of a debtor on a bond is proved by the evidence of any person who deposes to having seen such signature made, and the bond being this proved is admissible evidence though the signature in question may subsequently be held to be a forgery. Similarly, a document purporting to be thirty years old, which is produced from proper custody, may be at once used in evidence, though its genuineness may ultimately be disproved.

### 328.

In marking documents the letter P may conveniently be used for the plaintiff and the letter D for the defendant. Thus the series of the plaintiff's exhibits will be P-1, P-2, P-3, etc. and of the defendant's exhibits D-1, D-2, D-3, etc. When defendants put in separate sets of exhibits the series of each defendant's exhibits may be distinguished thus : I D-1, I D-2, I D-3, etc., II D-1, II D-2, II D-3, etc. Similarly, in execution cases, the exhibits of the judgement-creditor may be marked C-1, C-2, C-3, etc., and those of judgement-debtor D-1, D-2, D-3 etc.

### 329.

(1) A separate list of the documents admitted in evidence on behalf of each party should be prepared in the following form :-List of Documents Admitted in Evidence for the Plaintiff (or Defendant)

Distinguishing marks	Description of document	Date of Admission	Remarks
(1)	(2)	(3)	(4)

(Signature) Judge (2) Documents should be entered in the list in the order in which they are admitted and marked. They should be separated from unexhibited documents and arranged in the order in which they are admitted and marked. If any document has been admitted subject to objection a note to that effect should be made in the remarks column. Similarly, if a document is torn, worm-eaten or otherwise damaged the fact should be noted in that column.

### 330.

Strong covers should be used for protecting the documents admitted in evidence on behalf of each party. The best form of cover is a sheet of cartridge paper 19" X 1/2", bent, double, and thus made to enclose on both sides all the exhibits on behalf of the party concerned.

### 331.

If any document is considered by the Court to be inadmissible in evidence, it should be rejected and the endorsement referred to in Rule 323 (2) should be completed as under, -A.B. v. C.D. Suit No. 2 of 1990 Filed by plaintiff on 9th January, 1990 Rejected as filed too late. (Signature) Judge Dated, the 1st April, 1990. A.B. v. C.D. Suit No. 2 of 1990 Filed by plaintiff on 9th January, 1990. Rejected as unproved. (Signature) Judge Dated, the 1st April, 1990. Judge A.B. v. C.D. Suit No. 2 of 1990 Filed by plaintiff on 9th January, 1990. Rejected as irrelevant. (Signature) Judge Dated, the 1st April, 1990.

### **332.**

Documents tendered in evidence, but rejected should be returned, either at once or at the conclusion of the trial, to the person by whom they were tendered and his signature should be obtained in column 6 of the list referred to in Rule 323 (1) against each document so returned. Note. - A pleader is bound to take back any document produced by his client which the Court, under this rule, orders to be returned and to sign a receipt for it in column 6 of the list.

### **333.**

Before proceeding to judgement the Court should finally revise the record on which judgement is to be based to see that all documents which have been admitted in evidence are on the record and should return those which have not been admitted in evidence but are still on record.

### **334.**

(1) When a plaint is returned before registration for presentation to the proper Court, all documents filed with it should be returned with it. (2) If it is returned after registration unadmitted documents should be returned with it and the return of other documents will be governed by the provisions of the succeeding rule.

### **335.**

An application for return of a document admitted in evidence and placed on the record may be presented to the Court which admitted it to the record, or if that Court does not sit at the place where the record has been finally deposited, to such Court of a Civil Judge sitting at that place as may from time to time be designated by the District Judge. If the application is made to a Court which does not sit at the place where the record has been deposited, it shall be forwarded by that Court to the Civil Judge deputed by the District Judge as aforesaid and the Civil Judge, if he sees no objection, shall send the document to the Court originally applied to along with the application, returning in the record of a memorandum showing that the document has been sent for return to the party applying for it. After the document has been returned, the Court returning it shall note the fact on the application which shall be re-submitted to the Civil Judge. The Civil Judge shall then note the date of actual return of the document in the list prepared under Rule 329 (1) and cause the application to be filed with the record. Each court sitting at the place where its records are deposited shall deal direct with the record-room in the matter of returning documents which it admitted to the record.

### **336.**

In cases in which an appeal is allowed by law, no document shall be returned until the period allowed for preferring such appeal has elapsed, or until such appeal, if preferred, has been disposed of, unless the person applying for the return of the document delivers a certified copy to be



substituted for the original and undertakes to produce the original if required to do so. No document shall, however, be returned which, by force of the decree, has become wholly void or useless. The return of a document should be noted in the list referred to in Rule 329 (1).

### 337.

To every copy of a decree given to the parties to a suit or case there shall be annexed a printed notice in the following form calling upon them to withdraw their exhibits as soon as the decree shall have become final :-Notice To Take Back DocumentsIn the Court of.....Suit No.....of.....Plaintiff.....DefendantThe parties in the above suit are hereby required to take back, as soon as the decree shall have become final, the documents produced by them which are exhibits in the above case. If they fail to take them back, the documents will be destroyed when the record is destroyed.Dated.....JudgeNote. - An application presented by any person for the return of a document filed by him in any Court is exempt from court-fees.

### 338.

When prosecution is ordered under Section 476, Criminal Procedure Code, the Court should send to the Magistrate the documents in respect of which an offence is supposed to have been committed with the order directing the inquiry or trial, due precautions being taken to ensure their safe custody. If the production of other original documents is necessary, a copy of each should be prepared by the Court and sent with the original to the Magistrate who will promptly return the original to the Court concerned unless they are required for reference. If they are required for reference they should be returned to the Court concerned immediately on the completion of the trial. If any original document is brought on the record of a criminal case it should, immediately after the case has been finally disposed of, be returned to the Court concerned for being replaced in the record of the civil case in its proper place.Note. - When any document admitted in evidence is removed from the record of a civil case and sent to a Magistrate, the fact should be noted in the remarks column of the list referred to in Rule 329 (1). Similarly, when the document is received back, the fact should be noted in that column.

### 339.

(1) Documents suspected to be forged should be kept in a sealed cover in the custody of the Nazir or Naib-Nazir and not in the connected record. At an out-station when the record of a case containing such a document is sent after disposal to the district record-room the Judge should send the sealed cover separately along with a covering letter inside a registered packet to the officer in charge of the record-room drawing his special attention to the nature of the contents of the sealed cover and giving the number and date of disposal of the connected case and the particulars of the document sufficient to identify it and asking for an acknowledgment of the same. The sealed cover itself should bear these details and should also bear the certificate of the despatching Judge that the cover was sealed in his presence. On receipt of the packet in the district office the officer receiving it should satisfy himself that the particulars stated on the cover tally with those given in the letter. He should

then send the cover and the letter to the record-keeper who shall keep the cover in his charge under lock and key in a box provided for the purpose. The record-keeper shall acknowledge on the covering letter that he has received the sealed cover described therein and return the letter forthwith to the last mentioned officer who shall transmit it to the despatching Judge. The despatching Judge should preserve the covering letter for one year.(2)In the case of Courts at headquarters the procedure laid down in sub-rule (1) should be followed except that instead of a registered packet a closed packet shall be sent by the reader to the record-keeper direct. The record-keeper will acknowledge on the covering letter receipt of the cover, with its seals intact and with particulars stated on the cover tallying with those of the letter. This acknowledgment will be sent immediately to the despatching Court where it will be preserved for one year.(3)As covers are received the record-keeper shall note the date of receipt of each sealed cover in a list which should be kept in the aforesaid box The list should be preserved for three years from the date of disposal of the document last pending on it.(4)If the document is required by a Court for any purpose it should not be sent by the record-keeper except on a requisition endorsed by the Court. On no account should tire document be kept in the record until five years have passed from the date of final order in the case when the record-keeper will, if permitted by the officer in charge of the record-room, remove it from the sealed cover and file it as an ordinary document at its proper place in the record and make the necessary entry in the table of contents. The document will, in the absence of a special direction to the contrary, be destroyed when the file is eliminated.

## **6. Transmission of Records to the District Record-Room**

### **340.**

The records of (i) suits, (ii) miscellaneous judicial cases, (iii) execution cases, (iv) insolvency petitions, (v) regular appeals, (vi) miscellaneous appeals, (vii) miscellaneous cases and papers should be forwarded, together with the prescribed lists to the district record-room on the 5th of each month. The records of suits and cases decided by Judge of Small Cause Courts should similarly be forwarded to the district record-room on the 5th of each month together with the prescribed lists.Note. - The District Judge may, with the previous approval of the High Court, relax this rule in case of particular out-stations and fix the 20th of each month for forwarding the records to the district record-room. He should, however, warn the clerks concerned at such stations clearly to bear in mind that this extra fortnight's time is not intended for their benefit and that there should be no slackness on their part in the work of filing, paging and indexing of records.

### **341.**

If any record is not sent with the connected list referred to in the preceding rule a note should be made in the remarks column of the list against that case showing why the record has not been sent, e.g., (a) detained for copying, (b) detained in connection with department enquiry into the conduct of....., (c) sent to the clerk of Court on.....Each note should be individually verified and initialled by the Judge before he signs the list.

**342.**

The records of miscellaneous non-judicial cases should be forwarded together with the prescribed list to the district record-room on the 5th of each month.

## **Chapter XVI**

### **Custody, preservation and destruction of records**

#### **1. Custody of Records**

**343.**

When the records with the prescribed lists are received in the record-room, the record-keeper shall verify that the records correspond with those entered in the list, that their classification and arrangement have been properly carried out and that the contents of each file correspond with the table of contents and shall bring irregularities, if any, to the notice of the Judge concerned through the officer in charge of the record-room and the District Judge.

**344.**

(1)The record-keeper shall also ascertain whether the papers in the records bear the court-fee stamps as shown in the table of contents, whether the stamps have been properly punched, and whether the value of the stamps correspond with their value as noted on the right hand top corner of the paper and report irregularities, if any, to the District Judge through the officer in charge. He shall also cancel each label by stamping it in black ink with the circular date-stamp provided for the purpose.(2)If the record-keeper detects any irregularity or suspects that any Court-fee stamp is not genuine or has been previously used he shall immediately report the matter to the clerk of Court who will submit the case through the officer in charge of the record-room for the orders of the District Judge.

**345.**

(1)Once a month the clerk of Court or, in his absence, the deputy clerk of Court, shall satisfy himself, by inspection of the records deposited in the Record-room in the previous month, that the rules regarding the cancellation of the stamps are being properly carried out.(2)At least once in every six months the officer in charge shall make a general inspection of the record-room and satisfy himself that the rules regarding the cancellation of stamps are being properly carried out and that monthly inspections referred to in sub-rule (1) are being regularly made.(3)A note of inspections made under sub-rules (1) and (2) shall be made in an inspection book kept in the record-room and the book shall after each inspection be submitted to the District Judge.

**346.**

Records which should have been sent with the prescribed lists as required by Rule 340 but which have not been so sent should be entered by the record-keeper in the record-room register of despatch of civil records (Form No. 11-76) and a note should be made in column 7 of the register that the record has been detained in the Court. In the case of records at headquarters the signature of the Reader or other official in whose custody the record is kept should also be obtained in that column.

**347.**

On the 10th of each month the record-keeper should submit to the clerk of Court a report showing for each Court what records which should ordinarily have reached the record-room in the preceding month are yet to be received. The clerk of Court shall submit the report to the District Judge for his information and orders.

**348.**

The appellate records of the District Judges and Additional District Judges and records of execution proceedings shall be kept with the records of the original suits, but shall not be stitched to the files of these suits. Exception. - The records of execution proceedings held in a district other than that in which the connected suits were tried, shall be kept in the record-room of the former district in a separate bundle labelled "Executions in suits disposed of in other district".

**349.**

With a view to secure uniformity of practice in the matter of making up bundles (bastas) of records and to economize space on the racks in judicial record-rooms the following instructions should be observed-(1)The vertical space between each shelf and the one next above it is generally 18 inches of which 15 1/2 inches are available for storing records. If this is to be fully utilised, 14 inches should be filled, a blank space of 1 1/2 inches being left to facilitate removal and return of bundles.(2)Bundles containing records of classes I and HI will be divided into three groups-(a)less than 2 years old;(b)from 2 years to 25 years old;(c)over 35 years old.(3)Bundles containing records of group (a) will be of such depth as the District Judge may from time to time prescribe.(4)Bundles containing records of group (b), when originally formed, will be not less than 6 or more than 7 inches deep, and will be arranged in pairs, one above the other, the depth of each pair not exceeding 12 1/2 inches.(5)Bundles containing records of group (c) will be 14 inches deep.(6)Bundles containing records of class 11 will be divided into two groups-(a)less than 2 years old.(b)over 2 years old.Instructions (3) and (5) apply to bundles of groups (a) and (b) respectively.(7)Records of cases decided by Judges exercising Small Cause Court jurisdiction will be kept on a separate set of shelves, the bundles containing them being the same depth and arranged in the same manner as prescribed in instruction (4).(8)The cloth used for a bundle should be large enough to completely cover the records with it; convenient dimensions for one 7 inches deep are 3-1/2" x 1/2". To one corner of the

cloth should be attached a piece of stout cotton twine of suitable length which, if passed tightly round the bundle breadth-wise, will both keep it compact and exclude dust. Such twine can be had in most headquarter stations and its purchase in the local market is permissible under stationery rules. The commonly practised method of closing a bundle by tying the four corners in a knot at the top makes it almost impossible to place one bundle immediately on the top of another and is prohibited.(9) Bundles will be reformed on passing from group (a) to group (b) and from the latter to group (c). new label being prepared accordingly.(10) The figures in instructions (4) and (5) will be modified at the discretion of the District Judge to suit racks in which the space between shelves available for storing bundles is greater or less than 15.5 inches. Adherence to the depths prescribed above is incompatible with placing all cases decided on the same date or in the same month in the same bundle. Records should be traced by their numbers in the record-room registers and the labels on each bundle should, therefore, furnish the following particulars only : (a) Designation of Court. (b) Month and year of disposal. (c) Record-room numbers. A specimen label is printed below :- Civil Judge (Class II), Katni November and December, 1989 Nos. 401-470 Cases decided in different calendar years should nevertheless always be kept in the same bundle where convenient unless the District Judge directs otherwise.

### 350.

(1) When a record is removed from the record-room for any purpose, the record-keeper shall insert a memorandum in the prescribed Form (Form No. II-7), in its place in the bundle and note in the record-room register of despatch of civil records, the number of the case, the names of the parties, the designation of the Court or officer to which or to whom it is sent and the date of its removal and shall obtain the signature of the receiving Court or office in the appropriate column of the register. If the record is required by a Court or officer at an out-station the signature taken shall be that of the clerk who acts as a despatcher. On return of the record the record-keeper shall note in the same register the date of return. (2) When records are called for by a Court of Appeal, File D shall not be sent with the other files unless it is specially called for. (3) The record-room register of despatch of records should be destroyed after the expiry of three years from the date of the last entry, provided all the records entered therein have been received back.

### 351.

In the first week of each quarter the record-keeper shall prepare and submit to the District Judge through the clerk of Court a list in the prescribed form, showing all records which on the last day of the preceding quarter had been out of the record room, whether for the purposes of appeal or otherwise, for more than four months. If there are no entries made, a report to that effect shall be submitted for the District Judge's information. Note 1. - Whenever any civil record or part of a record is found to be missing, the fact shall be reported at once to the District Judge, who shall cause necessary inquiry to be held without delay and shall impose on the official held responsible for the loss of any punishment which he may think right or necessary in the case. All losses of an entire file and all cases in which theft is suspected shall be reported to the Registrar, High Court of Madhya Pradesh, Jabalpur, as soon as the enquiry has been completed. The report should contain a full statement of the measures taken to prevent losses of a like kind from recurring and also state

whether the papers have been recovered or not and what action has been taken against the official responsible or the person concerned if directed. "Missing" in this note means not forthcoming in the place where it would have been had the correct procedure been followed and not positively known to be in some proper custody. Note 2. - Clerks are forbidden to take records home.

### **352.**

The lists referred to in Rule 340 should be bound at the end of the year in every case, but may also be bound during the year when they reach the thickness of about 2 inches. The lists so bound will serve as record-room registers.

### **353.**

(1) The record-keeper shall maintain a register called "Register of Registers deposited in the record-room" (Form No. 11-77). The register shall consist of three parts, viz., -I. List of Court registers to be preserved permanently. II. List of registers to be eliminated after the expiry of a prescribed period. III. List of record-room registers. (2) Part II shall be divided into sections as follows : Section A-Registers to be preserved for 35 years. Section B-Registers to be preserved for 25 years. Section C-Registers to be preserved for 14 years. Section D-Registers to be preserved for 12 years. Section E-Registers to be preserved for 6 years. Section F-Registers to be preserved for 5 years. Section G-Registers to be preserved for 3 years. Section H-Registers to be preserved for 2 years. Section I-Registers to be preserved for 1 year. (3) Part I and each section of Part II shall be divided into groups by kinds of registers only, the number of groups in each part or section being identical with that of the kinds of registers included therein. A separate series of numbers shall be given to the registers in each group. Enough space should be allotted to each group to last for a number of years. Part II should be split up into as many volumes as in each district may be found convenient, each volume containing an integral number of sections. (4) Part I and each volume of Part II shall be paged throughout and an index shall be made in the opening pages. The entries in the index to Part I shall be made in the order of the groups into which the part is divided and those in the index to each volume of Part II shall be made in the order of section as well as groups in the volume. (5) When registers are received in the record-room the entries relating to them should be made below the existing entries in the respective groups in Part I or Part II to which they belong. (6) When a new volume is opened care should be taken to ensure that the space allotted to each group in Part I or Part II is such that the pages belonging to all groups will be completely filled in approximately the same length of time. (7) Record-room registers referred to in Rule 399 should be entered in Part III which should always be contained in a separate volume.

## **2. Preservation and Destruction of Records**

### **354.**

The following rules have been made under Section 3 of the Destruction of Records Act, 1917 (Central) and Section 2 of the Madhya Bharat Destruction of Records Act, 1952 (32 of 1952); Section

Records other than those of Courts of Small Causes and Miscellaneous non-judicial cases. (1) A. Files shall be preserved for ever, - A-1. Files shall be destroyed at the end of 12 years. B. Files shall be destroyed at the end of 25 years. C. Files shall be destroyed at the end of 12 years. D. Files shall be destroyed at the end of 1 year. Note. - An original will presented under Section 276 of the Indian Succession Act, 1925, is not a part of the record within the meaning of this rule. As required by Section 294 of the Act, all original wills should be permanently preserved. Where a grant of probate or letters of administration with copy of the will annexed has been made, the original will shall forthwith be forwarded to the District Registrar. In other cases each will shall be placed, after destruction of its connected record, in a special bundle devoted to this purpose and labelled accordingly. (2) The above periods shall be calculated as regards suits or cases of classes I, II and III from the date of the final decree or order, which in cases in which appeals are filed, will be that of the appellate Court. But in cases in which the decree or any subsequent order directs payment of money or delivery of property at a future fixed date or at recurring intervals, then the periods shall be calculated from such fixed date or from the end of the last of such recurring intervals, as the case may be. (3) In cases of class IV the period shall be reckoned from the date on which the application for execution was finally disposed of by the Court executing the decree or by a Court of appeal, whichever is the later date. For the purposes of this rule each execution record shall be dealt with separately, irrespective of any other application to execute the same decree or order. (4) Cumbersome and bulky exhibits, such as account books, village papers, and the like which cannot be conveniently put up with the records of the case in which they have been used, but which have to be preserved separately, e.g., in almirahs, boxes and bundles, may be destroyed, under the orders of the District Judge, after the expiry of the period of one year from the date of the decree becoming final. In such cases notice of the intended destruction shall be served one clear month before the expiry of the said period on the parties concerned or on their pleaders. (5) Elimination of D Files shall be done month by month. Each month the record-room registers of the thirteenth month back should be examined for the purposes. As far as possible similar monthly examinations should be made for the elimination of A-I, B and C Files, work on these being brought up-to-date by the end of each civil Court vacation. The ordinary monthly examination should be supplemented by- (a) a monthly examination of the registers 24 months further back, for the purpose of eliminating D Files; (b) an examination of the registers in each of the two successive vacations following that in or next before which the original examination was made, for the purpose of eliminating A-I, B and C Files. (6) A note of every paper, register or record taken out for destruction shall, at the time of removal, be made in the appropriate record-room register and shall be initialled by the record keeper. If in any case the destruction is not effected, the note shall be cancelled under the record-keeper's initials. (7) The destruction of all papers shall ordinarily be effected by burning in the presence of the record-keeper acting under the supervision of a Judge. At stations where there is a District or Central Jail, the Superintendent of which has certified that he will arrange for the prompt removal of waste paper, the District Judge may direct that all destruction shall be effected by tearing into small pieces. Before giving such a direction the District Judge shall satisfy himself that proper receptacle for temporary storage of waste paper pending removal is available and shall take all other precautions necessary to minimise the risk of damage by fire to records which have to be retained. Section II-Records of Miscellaneous Non-Judicial Cases (8) In records of miscellaneous non-judicial cases shall be destroyed at the end of three years from the date on which the cases were disposed of. Section III-Records Of Courts Of Small Causes (9) In cases where no one is entitled to

recover anything, the record shall be destroyed one year from the date of the decree or order finally disposing of the case. In cases where a decree has been fully satisfied, the record shall be destroyed at the end of one year from the date of satisfaction of the decree. In other cases where satisfaction is not obtained in Court or certified earlier, the record shall be destroyed at the end of the twelve years from-(a)the date of the decree sought to be executed, or(b)where the decree or any subsequent order directs payment of money or delivery of property to be made at the fixed date or at recurring intervals, the date so fixed, or the end of the last of such recurring intervals, as the case may be. The record of proceedings in execution of a decree deposited in the record-room after the expiry of twelve years from the date of the decree shall be destroyed after one year from the date of the final order passed in the proceedings. Section IV-Record-Room Registers(10)The record-room register, both of regular and Small Cause Courts, should be preserved for the same period for which the records to which they relate are preserved.

### **355.**

The record-keeper should maintain a plan and an index showing the number and position of the racks, and the arrangement and number of the bundles in the record-room and shall revise the index every year in the first week of July.[For Regulations for preservation and inspection of original wills filed under sub-section (1) of Section 294 of the Indian Succession Act, 1925 (XXXIV of 1925), see Appendix to this Part.]

## **Chapter XVII**

### **Inspection of records**

### **356.**

A legal practitioner entitled to practice in a Court may inspect the records of that Court and any party to a case or his recognised agent may inspect the record of that case whether pending or disposed of. Any other person desiring to inspect the record of a case, whether pending or decided, shall be required to state the purpose for which inspection is sought.

### **357.**

The records of all cases not deposited in the record-room are open to inspection by order of the Presiding Judge, or during his absence, by order of the Senior Judge at the station. The records deposited in the record-room will be open to inspection by order of the clerk of Court or deputy clerk of Court. Note. - Where there is more than one record-room in a district, or to meet any other exigency, the District Judge may, by a general or special order, authorise any particular ministerial officer to perform the duties of a clerk of Court or a deputy clerk of Court under this rule.



**358.**

The inspection of records shall be made at such time, in such place and in the presence of such officials as the Presiding Judge, subject in the case of subordinate Court to the control of the District Judge, may direct.

**359.**

An inspection Book in the prescribed form (Form No. 11-35) shall be kept in each Court and also in the record-room. Every person seeking inspection shall enter the necessary particulars therein. No separate application is necessary. No inspection shall be made till the Judge has granted permission. Note. - If a pleader's clerk is authorised by his master to inspect the record note that he has been so authorised should be made in the remarks column of the Inspection Book.

**360.**

Except as hereinafter provided in Rule 363 an inspection fee of 75 Paise an hour or fraction of an hour shall be charged for every record inspected. The record of a suit includes any execution proceeding or proceedings therein, particulars of which are entered in the appropriate column of the Inspection Book simultaneously with those of the suit, but it does not include the original record of any appellate proceeding arising out of the suit or out of any proceeding therein.

**361.**

Books and registers kept under the orders of High Court are open to inspection by public. The fees shall be 50 Paise an hour or fraction of an hour occupied in the inspection, irrespective of the nature or number of the books or registers inspected. The person seeking inspection must prior to taking inspection make the necessary entries in the Inspection Book.

**362.**

(1) Inspection fees shall be levied by means of court-fee stamps. The record-keeper, or in the case of a Court such officer as the Presiding Judge may direct to maintain the Inspection Book, shall affix the stamps in the column provided in the Inspection Book, and cancel them in the manner required by Section 30 of the Court-fees Act, 1870. (2) The Judge or the ministerial officer by whose orders the inspection is allowed shall see that the stamps are duly affixed and cancelled. These fees shall be prepaid and shall in no case be refunded.

**363.**

(1) No inspection fee shall be charged for the inspection of records, books and registers by Government law officers, or other persons duly authorised in this behalf, for the Government purposes, or by an official of the Court of Wards for the purposes of that Court or for the inspection

of the record of a pending case by a party thereto or his recognised agent or pleader empowered to act on his behalf or such pleader's recognized clerk or for the inspection of a record by any one when the inspection is made at the request of the Court. Note 1. - Public prosecutor's clerk may be regarded as duly authorised to inspect the record of a case in which the Public Prosecutor appears for Government. Note 2. The record of a pending case includes the record of a decided case which is called for reference in the pending case. (2) Inspection fee may be remitted by the District Judge in the case of Press correspondents who seek inspection of judgements or final order with a view to publication in a newspaper. (3) When inspection fees are remitted an entry to that effect shall be made in the column provided for affixing the court-fee labels in the Inspection Book and the reason for remission shall be noted in the remarks column.

### **364.**

(1) No pen and ink shall be used during the inspection. Pencil and paper may be used for making any notes or copies from the record but no marks shall be made on any record or paper inspected. (2) A person infringing sub-rule (1) may, by order of the Presiding Judge, be deprived of the right of inspection for such period as the Judge may direct. Such an order shall, however, be subject to the approval of the District Judge if it is passed by a Judge subordinate to the District Judge.

### **365.**

It shall be the duty of the official supervising the inspection of a record to see that no alterations are made in it or papers abstracted, and, that it is returned in its original condition when the inspection is over. He shall permit none but the applicant himself to inspect the record or to take notes or copies therefrom. The inspection must ordinarily be completed and the record returned within the hours fixed by the District Judge for inspection under Rule 358.

### **366.**

If the applicant fails to make inspection within one week from the date on which inspection was ordered, the order shall lapse and no further inspection shall be allowed without a fresh application.

### **367.**

(1) When an appeal is about to be filed by a pleader of an appellate Court and the record of the proceedings in the case is not in the appellate Court situated in the place where the appellate Court ordinarily sits, it should be sent for by the appellate Court and kept ready for inspection by the said pleader, provided a certificate is put in by the pleader to the effect that he is about to file an appeal in the Court addressed under instructions from a person affected by the decree or order of a subordinate Court, that the inspection of the record is necessary in order to enable him to prepare the memorandum of appeal, and that he is unable, without great inconvenience or delay, to see the record at the place where it is. (2) If the record is in a Court situated in the place where the appellate Court ordinarily sits but has not been passed on to the record-room the Judge of the Court to which

the proceedings belong may, at his discretion, allow the record to be inspected, provided the pleader files a certificate as laid down in sub-rule (1).Note. - An application for moving the Court to act under this rule should be stamped with court-fee stamp of one rupee as required by Article 1A, Schedule II, to the Court Fees Act, or as amended from time to time, if the transmission of the record involves the use of post, a further fee of rupee one or as payable under Article 1A, *ibid*, should be levied.

### **368.**

Inspection of wills, probate of which has been granted, shall be given according to the regulations made by the State Government under Section 294 (2) of the Indian Succession Act, 1925. The regulations are reproduced in the Appendix to this part. Appendix II Regulations made by the State Government under Section 294 (2) of the Indian Succession Act, 1925, for the preservation and inspection of wills

**1. When probate of a will has been granted under Section 289 of the Indian Succession Act, 1925 (XXXIX of 1925) (hereinafter referred to as the Act) or when letters of administration, with a copy of the will annexed, have been granted under Section 290 of the Act, and the original will has been filed among the records of the District Judge's Court, the District Judge shall forthwith deposit the will in the fire-proof box used by the Registrar under Section 43 (2) of the Indian Registration Act, 1908 (XVI of 1908). A register shall be kept of all the wills so deposited; and each will shall be enclosed in a sealed cover bearing the serial number of the will in the register of wills, the name of the person whose will is enclosed, the date of deposit and the signature of the District Judge.**

**2. When the estate of which the will relates has been administered (vide Section 317 of the Act), the will shall be filed in open form in the compilation containing in order of registry all the wills filed under sub-section (1) of Section 294 of the Act. Each will shall bear its registration number and a list of contents shall be prefixed to the file. The compilation shall be kept in the aforesaid fire proof box.**

**3. The rules for the inspection of records of civil proceeding will, so far as may be, apply to the inspection of wills deposited as above. Inspection shall only be allowed by order of the District Judge and in the presence of the District Registrar, and a fee of Rs. 2 per hour or fraction of an hour shall be charged for every will inspected.**

**4. The register of wills maintained under Regulation 1 shall be kept in the aforesaid fire-proof box. The District Registrar who holds the keys of this box shall be responsible for the safe custody of the wills and register. Whenever a Will is withdrawn, the order of the District Judge calling for its production must be deposited in its place, a note of the withdrawal being at the same time made in the remarks column of the register.**

[6] Notification No. 4692. - In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of Madhya Pradesh Civil Courts Act, 1958 and all other powers enabling, and in supersession of the existing rules in force in Civil Courts in any part of Madhya Pradesh on the concerned subject, the following rules relating to Court Registers, Periodical Returns and Statements have, with the previous approval of the Governor, been made by the High Court of Madhya Pradesh, Jabalpur, and published for general information.

## **Part III – Court Registers, Periodical Returns and Statements**

### **Chapter 18**

#### **Court registers**

#### **369.**

The following registers shall be maintained by the Courts mentioned against each column (4) of the sub-joined table and shall be preserved for the period shown in column (5) thereof, the period being counted from the date of the last serial entry in each register. The registers should not however, be destroyed until the records of all the cases entered therein are destroyed. The registers should be kept from year to year until full unless required by any standing orders to be closed at the end of each year :-

S. No.	Name of register	No. of form in schedule	By what Courts to be maintained	Period for which to be preserved
(1)	(2)	(3)	(4)	(5)
I-Courts of original jurisdiction				
1.	Register of Civil Suits in Small Cause Courts	II-16	Courts exercising Small Cause Court powers	Twelve years.
2.	Register of Civil Suits in other Courts (in two parts)-Part A-Title and other suitsPart B-Suits for	I-17II-17	Courts trying this class of suitsCourts trying this class of suits	For ever.Twenty-five years.

	money and movables			
3.	Register of Miscellaneous Judicial cases			Twelve years in Small Cause Courts and Twenty-five years in other Courts.
4.	Register of applications under the Indian Succession Act	II-19	Courts having jurisdiction	Twenty-five years.
5.	Register of Insolvency Petitions	II-20	Insolvency Courts	Twenty-five years.
6.	Register of Insolvent Estates	II-21	Insolvency Courts	Twenty-five years.
7.	Registers of Receivers	II-22	Insolvency Courts	Twenty-five years.
8.	Register of Estates of Wards under the Guardians and Wards Act and under the Indian Lunacy Act.	II-23	Courts having Jurisdiction	Twenty-five years.
9.	Register of Statements under Section 3 of the Musalman Wakf Act	.....	Courts having jurisdiction	For ever.
10.	Register of Processes and Processing fees	II-24	All Courts	Three years.
11.	Register of diet-money received by money-order	II-25	Courts receiving processes from outlying Courts for service	Three years.
12.	Book of receipts for money	XV-99	All Courts	Six years.
13.	Register of fines imposed on witnesses and for contempt of Court	II-26	All Courts	Three years.
14.	Register of Stamp Duties and Penalties realised	II-27	All Courts	Three years.
15.	Register of Commission issued	II-28	All Courts	Three years.
16.	Register of Commissions received from other Courts	II-29	All Courts	Three years.
17.	Receipt book of documents admitted in evidence and returned	II-30	All Courts	Six years.
18.		II-31	All Courts	Twenty-five years.

	Register of decrees received from other Courts for execution			
19.	Book of deposit repayment vouchers	II-32	All Courts	Twelve years.
20.	Judicial Diary	II-33	All Courts[xxx] [Omitted by the M.P. Rajpatra, Part IV(Ga), dated 16-6-1978, p. 190.]	Two years.
21.	Station dak book	II-34	All Courts	Three years.
22.	Inspection book	II-35	All Courts	Three years.
23.	Causelist	II-36	All Courts	One year
24.	Register of Court fees realised		All Courts	Three years.
II.-Courts of Appellate Jurisdiction				
1.	Register of regular appeals (in twoparts),-Part A-Appeals from title and othersuitsPart B-Appeals from suits for money and movables	II-38II-38	All CourtsAll Courts	For ever.Twenty-five years
2.	Register of Miscellaneous Appeals.	II-39	All Courts	Twelve years.

Note. - A Court having jurisdiction both as a Court of a Civil Judge and as a Court of Small Causes should maintain separate sets of registers in these capacities, save that the Inspection Book and Judicial Diary shall be common.

### 370. Register of civil suits in small cause Courts.

- In this register shall be entered all suits institution in Courts of Small Causes and also those to be tried summarily by Courts invested with Small Cause Court powers. More than two entries shall not be made on any page. The name of the tahsil from which the suit arises shall be entered below the serial number in column (1). Details regarding each plaintiff and each defendant and their registered addresses, if filed, shall be entered in columns (2) and (3), respectively. In column (5) shall be entered not only the date of first hearing but also each date to which the hearing of the suit may be adjourned. When tire suit is disposed of the record-room number and the year allotted to it shall be entered in column (1). The date and result of revision by tire High Court shall be entered in red ink in columns (6) and (7), respectively. In column (8) shall be entered the date on which each application for execution admitted is received in Court. This column will frequently contain more

than one entry as the date of each application admitted must be entered. In the last column of the register shall be entered a note of every return of non-execution, release from jail, payment into Court before execution and similar matters together with the appropriate dates. Note. - In case of dismissal of a suit as fully satisfied in or out of Court the entry in column (7) shall be one of full satisfied in or out of Court without stating for whom the decree has been passed.

### **371. Registers of civil suits in other Courts.**

(1) This register shall be maintained in two separate parts to be styled 'Part A. - Title and other suits' and 'Part B-Suits for money and movables', and all suits tried by ordinary procedure shall be entered in it. In Part A shall be entered suits for immovable property, suits for specific relief, mortgage suits, and other suits not registered in Part B; in Part B, suits for money or movable property. Suits relating to questions of title under any law relating to land shall be entered in Part A. Contested applications for Probate or for Letters of Administration, as also applications for revocation of Probate or Letters of Administration shall be registered as suits in Part A. (2) The name of the Tahsil, from which the suit arises, shall be entered below the date of institution in column (1). If a suit is instituted on Additional District Judge side, the letters "ADJ" shall also be entered in red ink in that column. To the serial number of each suit shown in column (2), the distinguishing letters 'A' or 'B' shall be added according to the Part in which a suit is registered. In the same column the letters 'SC' shall be entered in red ink against each suit which is cognizable by Small Cause Court and is not over Rs. 1,000 in value. The presiding Judge, when directing the claim to be registered shall endorse on it a note indicating whether the suit is cognizable by a Small Cause Court or not. Details regarding each plaintiff and each defendant shall be entered in columns (3) to (5), and (6) to (8), respectively. The registered address of each plaintiff and that of each defendant shall, if filed, be noted in columns (5) and (8), respectively. In column (12) shall be entered not only the date of the first hearing but also each date to which the hearing of the suit may be adjourned. When the suit is disposed of, the record-room number and the year allotted to it shall be entered in column (2) below the serial number. In column (18) shall be entered the date on which each application for execution admitted is received in Court and in column (19) the date on which an order for execution of the decree is made. Each of these two columns will frequently contain more than one entry, as the date of each application admitted and of each order passed on such application must be entered. In column (25) a note of every return of non-execution, the period for which a judgement-debtor is detained in civil prison, release from jail payment into Court before execution, and similar matters shall also be made. Note 1. - If a suit is dismissed for want of prosecution or in default of plaintiff or of both parties, or is dismissed as compromised out of Court, or is withdrawn with or without liberty to institute a fresh suit or if the plaint is returned after registration for presentation to a proper Court, the result should be noted across columns (14) and (15). A decree in terms of a compromise will be also noted in these columns. When costs of one party are ordered to be paid by the other party, column (14) should show the name of the party to whom costs are to be paid, and column (15) the amount of costs. Note 2. - In all kinds of cases in which preliminary decrees are passed, the result of such decrees shall be noted in columns (13) to (15). When a decree is transferred for execution from one Court to another, a note regarding the transfer shall be made across columns (19) to (25) of the register of regular suits and across columns (9) to (13) of the register of Small Cause Court Suits.

### 372. Register of miscellaneous Judicial cases.

- In this register shall be entered all miscellaneous judicial cases for which no separate register is prescribed. The following list shows the cases which are to be treated as miscellaneous judicial cases and without the special orders of the High Court no addition should be made thereto : Cases under the Code of Civil Procedure. - (1) Complaints rejected or returned for presentation to the proper Court before registration. (2) Memoranda of appeal rejected under Order XLI, Rule 3, or returned for presentation to the proper Court before registration. (3) Application under Sections 22 and 24 to an appellate Court to transfer suits, appeals or other proceedings pending in a subordinate Court. (4) Application under Rule 2 (3), Order II; Rule 21 (2), Order VII; Rule 12 (3), Order VIII; Rules 4, 9 and 13, Order IX; Rule 9 (2), Order XXII; Rule 2(2), Order XXV and Rules 19 and 21(1), Order XLI, arising in respect of suit or appeal. Note. - Applications arising from a miscellaneous judicial case shall not be separately registered but a note should be made in the remarks column against the parent application. (5) Miscellaneous Criminal Proceedings under Rules 10 to 13, 17 and 18 of Order XVI. (6) Cases under Sections 47, 95, 144 and 145. Note. - When an execution case is pending and an application under Rule 11 (2), Order XX is made the application should be treated as part of the execution case and not as a separate miscellaneous judicial case. (7) Inquiries under Rule 2 (2), Order XXI, on the applications of judgment-debtor as to payments or adjustment alleged to have been made. (8) Claims and objections under Rule 58 (1) of Order XXI or under Rule 8 of Order XXXVIII. Note. - Applications under Rules 90 and 91, Order XXI, to set aside a sale in execution of a decree are to be treated as part of the execution case and not as separate miscellaneous case. (9) Application under Rule 95, Order XXI, for delivery of property. (10) Complaints by decree-holders or purchasers under rule 97, Order XXI, of resistance to possession. (11) Applications under Rule 100, Order XXI. (12) Commissions under Rule 4, Order XXXVI, for the examination of witnesses, received from other Courts and executed by the Court. (13) Applications under Rule 2, Order XXXIII, and Rule 1, Order XLIV, for permission to sue or appeal as a pauper. (14) Applications under Rule 2 (3), Order XXXIX. (15) Applications for a reference to the High Court under Rule 7, Order XL VI. (16) Applications under Rule 1, Order XLVII. (17) Case, under other Acts. - Inquiries under clause (5) of Section 19H of the Court Fees Act, 1870. (18) Cases relating to legal practitioners. (19) Applications under Sections 7, 11, 22, 32, 34, 36, 41, 46, 53 and 72 to 74 of the Indian Trusts Act, 1882. (20) Cases under Sections 57 and 83 of the Transfer of Property Act, 1882. (21) Applications under sub-sections (3) and (4) of Section 16 of the Indian Telegraph Act, 1885. (22) Applications with respect to the guardianship of the person or of the property of minors under the Guardians and Wards Act, 1890, applications under Section 31 of the same Act and proceedings in connection with the accounts of each year under the rules framed by the High Court under Section 50 of the Act. (23) Cases under Parts in and IV of the Land Acquisition Act, 1894. (24) Miscellaneous criminal cases under Sections 476, 476A, 478, [479A] [Inserted vide Notification No. 13523-III-1-5-57, dated 22-11-1966. Published in M.P. Rajpatra, Part IV (Ga) dated 2-12-1966 at page 999.] and 480 of the [Code of Criminal Procedure, 1898] [See now the Code of Criminal Procedure, 1973 (2 of 1974)]. (25) Applications or proceedings under Section 61 of the Indian Stamp Act, 1899. (26) Proceedings under Section 62, 76 (2), 77, 80, 82 and 88 of the Indian Lunacy Act, 1912. (27) Applications under the Companies Act, 1956. (28) Applications under Sections 25 (2) of the Madhya Pradesh Land Alienation Act, 1916. (29) Petitions under Section 7 and proceedings under Sections 4, 53, 54, 70 and 72 of the Provincial Insolvency Act, 1920. Note. -



Proceedings under Sections 4, 53 and 54 of the Act should be entered in this register and not in the register of Insolvency Petitions.(30)Petitions under Sections 3 and 7 of the Charitable and Religious Trusts Act, 1920.(31)Proceedings under Sections 3 and 5 of the Musalman Wakf Act, 1923(32)[ xxx] [Omitted vide Notification No. 9156-III-1 -12-36, F. No. 10/1, Part 2, dated 15-10-63. Published in M.P Gazette, Part 4 (Ga), dated 1-11-63 at page 816.],(33)Applications under Section 14 of the Madhya Pradesh Local Fund Audit Act, 1933.(34)Applications under Section 11 of the Madhya Pradesh Money Lenders Act, 1934.(35)Petitions under Section 3 of the Madhya Pradesh Adjustment and Liquidation of Industrial Workers' Debt Act, 1936.(36)Cases under Section 26 of the Madhya Pradesh Public Trusts Act, 1951.(37)Proceedings against witnesses and proceedings under sub-section (2) of Section 18A of the Workmen's Compensation Act, 1923.(38)Applications under the Insurance Act, 1938.(39)Applications for appointment or removal of mutawallis; applications for fixing; reducing or increasing the remuneration or allowances of mutawallis or of the officers or servants attached to the wakf; and applications by mutawallis for permission to alienate wakf immovable property.(40)Applications under Sections 21 and 38 of the Madhya Pradesh Co-operative Land Mortgage Banks Act, 1937.(41)The following applications under the Arbitration Act, 1940 when not connected with a suit or proceeding pending before a Civil Court or with an application under Section 20 (2) or 14 (2) of the Act registered as a suit;-(i)to revoke the authority of an arbitrator or umpire (Section 5);(ii)to appoint an arbitrator sole arbitrator, or umpire (Sections 8 (2) and 12);(iii)to set aside the appointment of a sole arbitrator or to allow further time of a defaulting party (Section 9);(iv)to remove an arbitrator or umpire (Section 11);(v)to obtain the Court's opinion on a special case, etc., states (Section 13 (b));(vi)to modify or correct an award (Section 15);(vii)to enlarge time (Section 28);(viii)to set aside an award (Section 30);(ix)to contest an arbitration agreement or award (Section 33);(x)to obtain an order for delivery of the award (Section 38).(42)Applications under Section 21 of the Arbitration Act, 1940 (X of 1940).(43)Petitions under Section 20 of the Madhya Pradesh Municipalities Act, 1961.(44)Proceedings under sub-section (6) of Section 17B of the Indian Criminal Law Amendment Act, 1908 (XIV of 1908).Note. - Registered address shall be shown in columns (3) and (4) and in the instructions contained in Rule 371 (2) followed in making entries.(45)Cases under clause (ii) of sub-section (1) of Section 4 of the Madhya Pradesh Accommodation (Requisition) Act, 1948 (LXIII of 1948).(46)Cases under clause (b) of sub-section (1) of Section 91 C of the Madhya Pradesh Irrigation Act, 1931 (III of 1931).(47)Applications-(i)under the proviso to Section 35 (5) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (I of 1951), or(ii)under Section 15 (2)(c) of the Madhya Bharat Abolition of Jagirs Act, 1951 (XXVIH of 1951), or(iii)under Section 15 (3)(b) of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (XI of 1952), or(iv)under Section 15 (3)(b) of the Bhopal Abolition of Jagirs and Land Reforms Act, 1953 (X of 1953), or(v)under the proviso to Section 35 (3) (b) of Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (VI of 1952).(48)References under section 62 of the Madhya Pradesh Panchayats Act, 1962.(49)References under Section 146 of the Code of Criminal Procedure.(50)[ Applications under Section 307 (5) of the Madhya Pradesh Municipal Corporation Act, 1956.] [Inserted vide Notification No. 13523-III-1-5-57, dated 22-11-1966, Published in M.P, Rajpatra, Part IV (Ga), dated 2-12-1966 at page 999.]

### **373. Register of applications under the Indian Succession Act.**

- Applications under Sections 192, 276, 278 and 372 of the Act shall be entered in this register. Subsidiary applications under other sections of the Act shall not be registered separately but a brief note of the disposal of such applications shall be made in the remarks column of the register against the original entry.

### **374. Register of insolvency petitions.**

- Petitions under Section 7 of the Provincial Insolvency Act should be entered in this register and also proceedings under Sections 70 and 72 of the Act. Proceedings under Sections 4, 53 and 54 of the Act which are to be treated as miscellaneous judicial cases should be registered in the register of Miscellaneous Judicial Cases and not in this register and their serial number in that register should be noted in the remarks column of this register against the parent case.

### **375. Register of estates of wards under the Guardians and Wards Act and under the Indian Lunacy Act.**

- A common register has been prescribed for estates of wards under the Guardians and Wards Act and the Indian Lunacy Act. When an entry relates to the latter Act the words "Lunacy Act" should be written below the serial number in column (1) so that the register may show at a glance the estates under the said Act.

### **376. Register of statements under Section 3 of the Musalman Wakf Act.**

- Statements filed under Section 3 of the Act shall be entered in this register but those under Section 5 shall be entered in the register of Miscellaneous Judicial Cases mentioned in Rules 369 and 372 above.

### **377. Register of processes and process-fees.**

(1)The register shall be maintained by the process-writer of each Court. Processes received from other courts for service shall be entered in this register, but the columns for showing the Court-fees levied should be left blank.(2)When a person applies for the issue of summons to a witness he shall tender a sum by way of diet-money (travelling and other expenses) sufficient to meet the requirements of Rule 2, Order XVI. The amount of diet-money shall be stated in the application if it is not so stated or if it is held by the Court to be insufficient, the application shall immediately be returned to the applicant for amendment or for payment of the deficient amount, as the case may be.(3)When a Court starts an inquiry under Section 476 of the Code of Criminal Procedure suo motu, diet-money shall be paid from contingencies the charges being debited to the head "Diet-money and travelling expenses of witnesses" to be opened under "Countersigned Contingencies". In other cases the person at whose instance the inquiry is made shall be required to tender diet money payable to witnesses as in a suit.(4)On receipt of an application or memorandum

for issue of a process it should immediately be put up before the Judge for his orders. If issue of the process is ordered the process-writer shall write out the process within a reasonable time, not exceeding three days, make the necessary entries in the register and send the process with the written application or memorandum and diet-money, if any, to the Nazir, who should put his signature in the appropriate column of the register, against each entry. The money should be acknowledged both in words and figures. When the process is issued free of cost column (5) of the register should be left blank. When service on several persons residing in the same village or ward of a municipality or cantonment is applied for at the same time and a fee of 75 Paise is paid for service of a process on each person after the first under the note to Article 1 of the various clauses of the Process-fee Rules the name of the village or ward should be entered in column (6) of the register.

### **378. Register of diet-money received by money-order.**

- The process writer shall maintain this register. When a money order relating to diet money is presented to him for acceptance, he shall make the necessary entries in the register and send the register with the money-order to the Judge who shall, after satisfying himself that the money has been accounted for in the register, put his initials in column (5) of the register and sign the acknowledgment in the money-order form. The money shall then be received by the process-writer, and if the connected process has been received, the process and the money shall be duly entered in the register and sent to the Nazir. If the connected process has not been received, the money shall be held by the process-writer till the process has not been received or till the process is received or till the expiry of two weeks from the date the money was received, whichever is earlier. If within the time the connected process is not received he shall report the fact to the Judge who shall order the Nazir to receive the money and to treat it as returned diet-money. The Nazir shall thereupon receive the money, acknowledge it in the last column of the register and deal with it as if it were returned diet-money.

### **379. Book of receipts for money.**

(1)As soon as an application or memorandum with diet-money is presented to a process-writer he shall enter the amount in one of the receipts in the book. Each receipt shall be in duplicate and the office copy shall be prepared, simultaneously with the original by means of a carbon paper. The originals which shall bear the same serial number as the carbon copy shall be tom off at the perforated line and presented to the payer as his receipt. Court clerks are prohibited from receiving any money other than diet-money and also from receiving any money after 4 p.m. Each clerk shall daily send the whole balance in his hands in a sealed leather bag to the Nazir not later than 4.45 p.m. for custody. Next day he shall take the bag and proceed to deal with the contents in the regular manner.(2)The numbers of processes issued in connection with such receipt shall be noted on the counterfoil in the Book of Receipts and the numbers of receipts shall be given against the connected processes in the register of process and process-fees. An account of receipts and expenditure of diet-money shall be made in the Book of Receipts on the back of the last receipt issued for the day in respect of every day on which a transaction occurred showing that all amounts received have been fully spend and duly accounted for.The appropriate form will be one of the samples given below :-

## A.-Account of diet-money for 7th April, 1990.-

Last Balance-	Rs.
(i) As per receipt No.....	10
(ii) As per register of diet-money received by money order	6
Total receipts during the day	
(i) As per receipt No.....	8
(ii) As per register of diet-money received by money order	5
Sent to Nazarat-	
(i) As per receipt No.....and process No.....	15
(ii) As per register of diet-money received by money-order vide P.Nos.....	8
Balance	
(i) Receipt Nos.....	3
(ii) As per register of diet-money received by money order.	3

Or

## B.-Account of diet-money for 7th April, 1990

Last Balance-	
(i) As per receipt No.....	10
(ii) As per register of diet-money received by money order	6
There was no transaction on 7th April, 1990.	
Sent to Nazarat-	
(i) As per receipt No.....	10
(ii) As per register of diet-money received by money order	6
Balance	
(i) As per receipt No.....	Nil
(ii) As per register of diet-money received by money order	Nil

## C.-Account of diet money for 8th April, 1990-

There were no transactions from 1st to 8th April, 1990.

Total receipts during the day-

(i) As per receipt No.....	15
(ii) As per register of diet-money received by money order	5
Sent to Nazarat-	
(i) As per receipt No.....	10
(ii) As per register of diet-money received by money order	3
Balance-	
(i) As per receipt No.....	5
(ii) As per register of diet money received by money order	2

Signature of ClerkVerified.....Judge.Deputy Clerk of Court.Note. - The daily account should be

written neatly. As far as possible it should not run ahead of the receipts actually used. If necessary it may be written on pieces of paper pasted on the last receipt in such a way as to leave all accounts clearly visible.(3)The daily account shall be verified every day by the clerk or the deputy clerk of Court, or when there is no clerk or deputy clerk of Court by the Judge himself, who shall see that the money covered by the receipts issued has either been sent to the Nazir with the process or is in balance with the process-writer. He shall also satisfy himself by examining the counterfoils of that day and the preceding days that the number of processes issued have been correctly entered on all of them except those shown in the balance of the daily account.(4)The clerk or deputy clerk of Court, or when there is no clerk or deputy clerk of Court, the Judge himself shall check at least once a quarter, not less than five per cent of the receipts from the Book of Receipts for money with the connected entries of processes and diet-money in the register of process and process-fees, in order to ascertain whether the amount of diet-money noted in each receipt, has been duly accounted for in the said register. The result of this check shall be noted in the Inspection Note Book.(5)Inspecting officers shall see whether the daily account is being properly written up and systematically verified as prescribed in sub-rule (2) and whether the quarterly check, as required by sub-rule (4) is regularly made. They shall also see that the counter-foils in the Book of Receipts are legibly written and shall compare them with the actual receipts given to parties, if available.

### **380. Register of fines imposed on witnesses and for contempt of Court.**

(1)The entry of a case in this register, does not dispense with the necessity of entering the case in the register of Miscellaneous Judicial Cases. Entries in this register should be made only when a person has been sentenced to fine.(2)When a fine is realized by a Court, the presiding Judge shall send an order in writing to the Nazir to receive the money and credit it into the treasury The Nazir shall receive the money, deposit the amount in the treasury and report to the Court the number and the date of the treasury challan for being noted in the remarks column of the register.(3)In order to facilitate the monthly comparison prescribed by Rule 44, Madhya Pradesh Financial Code, Volume I, each Court shall submit, not later than the 3rd of each month, to the District Judge, a simple memorandum showing the total amount of fines imposed, realized and paid in the treasury in the previous month.

### **381. Register of commissions received from other Courts.**

- Commissions received from other Courts shall be entered in the register. If a commission is not entrusted to a pleader, but is executed by the Court itself it shall be treated as a miscellaneous judicial case and entered in the register of Miscellaneous Judicial Cases also [Rule 372 (12) If no remittance is received with the commission and neither party appears to proceed with the case, inquiry should be made from the Court which issued the commission as laid down in Rule 251.

### **382. Receipt book of documents admitted in evidence and returned.**

- Applications for the return of documents, etc., which have been admitted in evidence by Courts in the interior of the district and form part of records already deposited in the district record-room may be registered in the Judge's Court and disposed of under his orders.

### **383. Station Dak Book.**

- Papers and articles, the despatch of which is noted in a separate register, e.g., processes and diet money sent to the Nazir, should not be entered in this register. But all other articles, papers or record sent from the Court to any other Court, office or department shall be entered in it.

### **384. Register of regular appeals.**

- The register shall be maintained in two parts, to be styled as 'Part A-Appeals from title and other suits', and 'Part B-Appeals from suit for money and movables'. In Part A shall be registered all appeals from decrees in suit which are registered in Part A of the Register of Civil Suits, referred to in Rule 371 above, and in Part B, all appeals from decrees in suits for money and movables. Column (12) is not intended to show the amount of the claim in appeal. It should show the amount of the decree appealed from. If a suit is dismissed, the decree has no value and this column should be left blank. Costs awarded by the lower Court should be noted in column (11) and not in column (12).

### **385. Register of miscellaneous appeals.**

- The following appeals shall be treated as miscellaneous appeals and registered as such :-(i) Appeals from orders under Section 104, read with Rule 1, Order XLD3.(ii) Appeals from orders in miscellaneous judicial cases not amounting to a decree.(iii) Appeals under Section 476B of the Code of Criminal Procedure from the order of a Civil Court.(iv) Appeals under Section 25 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950).(v) Appeals under the Drugs Act, 1940 or rules made thereunder against suspension or cancellation of licence.(vi) Appeals under sub-section (4) of Section 32 of the Dentists Act, 1948 (XVI of 1948).(vii) Appeals under Section 11 (1)(b) of the Indian Trade Unions Act, 1926 (XVI of 1926).(viii) Appeals under Section 17 of the Payment of Wages Act, 1936.(ix) Appeals under Section 149 of the Madhya Pradesh Municipal Corporations Act, 1956.(x) Appeals under Section 139 or Section 172 of the Madhya Pradesh Municipalities Act, 1961.(xi) [An appeal against an appealable order passed under any Central or Local Act.] [Added vide High Court Notification No. 11172-III-1-5-57-Ch-XVIII, dated 5-9-1966, Published in the M.P. Gazette, dated 16-9-1966, Part IV (Ga) at page 808.] Note. - Applications to transfer a suit under Sections 22 and 24 of the Code of Civil Procedure, applications for re-admission or rehearing of an appeal under Rules 19 and 21 of Order XLI, applications for leave to appeal as a pauper under Rule 1 of Order XLIV and applications for review of judgement under Section 114, read With Rule 1 of Order XLVII, are not appeals but are of nature of original applications, though made to an appellate Court, and should, therefore, be entered in the register of miscellaneous judicial cases and not in this register.

### **386. Supervision of clerical staff.**

- Every Judge should periodically inspect the work of his subordinates ordinarily once a month. The inspection should not be of a mere routine nature but should be directed towards ensuring that the subordinates do their work efficiently and honestly. For this purpose the Judge should occasionally

ask his process-writer, execution clerk and reader to bring the papers pending with him and see if any matter is being unnecessarily delayed or postponed. When leaving the Court, the Judge should generally ascertain whether there is any, and if so what, work to be done. Delays, defects or errors noticed should be recorded in a brief note of inspection. The Judge should not content himself merely with pointing out errors but should instruct the subordinate concerned how to remedy them.

## Chapter XIX

### Periodical returns and statements

#### 387.

District Judges shall submit the following returns and statements to the High Court on the dates mentioned below :

Nature of return and statement	No. of Form with the No. of the Schedule on which it is borne	Date of despatch
<b>A.-Monthly Returns</b>	+	
Monthly Return of Original Civil Work	II-101	15th of the month following that to which it relates
Monthly Return of Appellate Civil Work	II-102	
<b>B.-Half-Yearly Returns</b>	+	
Half-yearly Return of long-pending cases	II-103	20th July, 20th January.
<b>C.-Annual Statements</b>	+	
I. Tribunal Statement II. Description Statement III. Value Statement IV. Trial Statements Parts 1 and 2 V. Appeals Statements, Parts 1 and 2 VI. Execution Statement VII. Statement of proceedings in Insolvency, Parts 1 and 2 VIII. Statement of pending suits according to the year of institution.	II-121 II-122 II-123 II-124 II-125 II-126 II-127	15th February.
Tahsilwar Statement of suits instituted	II-128	1st February.
Note. - No monthly return shall be submitted for the month of May, but the return for June shall include the figures for May.		

**388.**

The monthly return of original and appellate civil work shall be accompanied by a short explanatory note drawing attention to any matter of interest in the return such as the consistently low out-turn of any Judge with any reasons therefor or the effectiveness of action taken to remedy faults disclosed in previous returns. The note should not be of a routine nature but should be designed to help the High Court in appreciating the trend of figures and its justification. An adequate scrutiny of monthly statistics by the District Judge is essential both to his understanding of the needs of his district and to his appreciation of his subordinate Courts. An explanatory note which indicates that this scrutiny has been performed conscientiously will not only avoid the necessity of the High Court having to ask for explanations of variations but will also avoid the risk of Judges of subordinate Courts being misjudged.

**389.**

(1) The following lists of cases which have been disposed of shall be forwarded to the record-room with the records to which they relate on the 5th of each month :- (i) List of Suits-Form No. 11-89. (ii) List of Miscellaneous Judicial Cases-Form No. 11-90. (iii) List of Execution Cases-Form No. 11-91. (iv) List of Insolvency Petitions-Form No. 11-92. (v) List of Regular Appeals-Form No. 11-93. (vi) List of Miscellaneous Appeals-Form No. 11-94. Note. - The District Judge may with the previous approval of the High Court relax this rule in case of particular outstation and fix the 20th of each month for forwarding these lists to the record room (See note below Rule 340). (2) The lists shall be written up as suits, cases, petitions and appeals are disposed of. In writing up the lists reasonable space shall be left after each entry for the necessary entries to be made by the record-keeper. (3) A separate list for suits of each class and for suits tried by summary procedure shall be prepared. Contested applications for probate or letters of administration which are suits of class II shall be entered in a list of suits of that class and not in the list of miscellaneous judicial cases. (4) When a Judge functions as a Court of Small Causes in addition to ordinary duties, the lists of suits and miscellaneous judicial cases shall be prepared separately for (i) Small Cause Court cases, and (ii) other cases. Note. - When the monthly lists and ledgers are put up to the Judge for signature he should see that the number of cases disposed of tally with those included in the list (see also Rule 341).

**390.**

A separate list for miscellaneous judicial cases of each class shall be prepared. The list of cases of class I shall include cases in which a question of title to immovable property is decided under Section 4 of the Provincial Insolvency Act, 1920, and also those under the Musalman Wakf Act, 1923. The lists of miscellaneous judicial cases of classes II and III shall include only those miscellaneous judicial cases for which independent records are compiled. All other miscellaneous judicial cases shall be tabulated with the record to which they belong.



**391.**

The list of insolvency petitions disposed of shall contain only those petitions which are prescribed by Section 7 of the Provincial Insolvency Act, 1920. An insolvency petition shall be treated as disposed of (a) when it is allowed to be withdrawn under Section 14, or (b) when it is dismissed under Section 25, or (c) when an order of adjudication is passed on it under Section 27 (1) of the Act. These petitions shall be excluded from the list of miscellaneous judicial cases disposed of. Subsequent proceedings (if any) shall, in each case, be regarded as in continuation of the connected petition and shall eventually be filed in the record-room with it.

**392.**

Cases and papers not included in any of the lists mentioned in Rule 389 above shall be forwarded to the record-keeper with a list in the prescribed Form (No. 11-95), on the 5th, or if the District Judge so directs in case of particular out-stations, on the 20th of each month. Execution proceedings disposed of in the exercise of Small Cause Court jurisdiction shall be listed separately in Form No. 11-91. Note. - The record-room number and the year allotted to the record of each suit disposed of should be noted in the remarks column of the lists of the execution cases and miscellaneous cases and papers and also on the sheet of such cases and papers.

**393.**

(1) Each Court of original jurisdiction shall maintain in the prescribed form-(i) Description Value Ledger-Form No. 13-111.(ii) Disposal Ledger of Suits-Form No. 11-112.(iii) Disposal Ledger of Miscellaneous Judicial Cases other than Insolvency Petitions-Form No. 11-112.(iv) Disposal Ledger of Execution-Form No. II-113.(v) Ledger of pending suits according to the year of institution-Form No. II-114. Note. - These ledgers shall be prepared separately for (i) cases tried by small cause procedure, and (ii) cases tried by ordinary procedure.(2) Each Court of appeal shall maintain-(i) Disposal Ledger of Regular Appeals-Form No. 11-115.(ii) Disposal Ledger of Miscellaneous Appeals-Form No. 11-115.(3) Each Court exercising insolvency jurisdiction shall maintain-(i) Disposal Ledger of Insolvency Petitions.(ii) Insolvency Estates Ledger.

**394.**

The description value ledger shall be written up as cases instituted are registered and all other ledgers as cases are disposed of. Note. - At inspection the District Judge should examine whether or not the ledgers are written up-to-date and are correctly and properly prepared.

**395.**

All ledgers shall be totalled monthly, but the months of May and June shall, for this purpose, be considered as one month. The ledgers shall be forwarded to the District Judge not later than the 4th of the succeeding month.

**396.**

(1) Description value ledgers shall be maintained properly for-I. Suits not exceeding Rs. 50 in value.II. Suits exceeding Rs. 50 but not exceeding Rs. 200 in value.III. Suits exceeding Rs. 200 but not exceeding Rs. 500 in value.IV. Suits exceeding Rs. 500 but not exceeding Rs. 1000 in value.V. Suits exceeding Rs. 1000 but not exceeding Rs. 5000 in value.VI. Suits exceeding Rs. 5000 but not exceeding Rs. 10,000 in value.VII. Suits exceeding Rs. 10,000 in value.Note. - When entering the value of any suit fraction of a rupee shall be omitted.(2) Only newly instituted suits shall be entered and no suit in which the plaint have been registered shall be included in this ledger. When a suit is transferred from one Court to another within the State it shall be entered only in the ledger of that Court in which it was pending at the end of the month in which it was instituted.(3) Column (10) of the ledger shall include-(a)suits under Section 9 of the Specific Relief Act.(b)Suits for specific performance of contracts.(c)Suits for cancellation or rectification of instruments or for cancellation of decrees or entries in the record of rights.(d)Suits for all kinds of declaration where no consequential relief is claimed.(e)Suits for injunction.(f)Application to file awards and agreements to refer to arbitration.(4) Column (16) shall include all other suits which do not fall under the headings of columns (9) to (15), e.g., suits on account, suits for partition, suits relating to religion and caste, administration suits, inter-pleader suits, suits for custody or guardianship of minors, suits for dissolution of partnership and suits for maintenance etc. A note describing clearly but briefly the nature of each suit entered in columns (7) and (16) shall be made in the remarks column.

**397.**

(1) When causes of action are joined in the same suit under Order II, Rule 3, the suit shall be returned under the heading which bears the highest money value, except where the claim is for possession of land and for mesne profits, in which case the suit shall be shown in column (9).(2) Suits in which immovable and also movable property are claimed shall be classified as suits for immovable property.(3) Suits relating to religion in which damages are not claimed shall be entered in column (16). If damages are claimed they shall be shown as suits for money.(4) Suits for an account, i.e., suits to enforce the rendering of an account and not for money due on an account, shall appear in column (16).(5) Cases in which an award is filed and judgement is asked for according to the award shall not be returned in column (16). They shall be classified in the same manner as if no reference to arbitration had been made.Note. - The correct classification shall be decided by the nature of the claim and not of the defence.

**398.**

The value of suits shall be determined by the value for the purpose of jurisdiction. In the case of suits the value of which cannot be estimated a brief explanation shall be given in the remarks column.

**399.**

Column 4 of the disposal ledger of suits shall include all cases revived under Order VII, Rule 21 (2), Order VIII, Rule 12 (3), Order IX, Rules 4, 9 and 13 and Order XXIII Rule 9, Civil Procedure Code, column (5) shall include all cases which cannot be included in columns (3) and (4) e.g., cases received by transfer or on remand under Order XLI, Rule 23, or cases reviewed under Order XLVII, Rule 4. Plaints rejected or returned after registration, suits abated or withdrawn with or without leave and suits dismissed under Order VII, Rule 21 (1) and Order IX, Rule 2, shall be included in column (7). Suits adjusted or satisfied shall be included in column (11). Suits partially abandoned, adjusted or satisfied shall be shown in the column appropriate to the manner in which the remainder of the suit was disposed of. Columns (14) and (15) shall include only cases disposed of by judgement pronounced according to an arbitral award under paragraph 16 of the Second Schedule to the Civil Procedure Code. Cases in which an award becomes void or is set aside shall be classified in accordance with their ultimate method of disposal. Suits disposed of an oath shall be shown as disposed of after full trial.

**400.**

Suits in which a preliminary decree is allowed by law and has been passed remain pending until the final decree has been passed except in the case of mortgage suits and suits for partition. Mortgage suits and suits for partition in which a preliminary decree is passed shall be treated as disposed of on the date of the preliminary decree.

**401.**

(1) In calculating duration of cases the time during which the case had actually been pending in a particular Court only shall be calculated. The period shall be reckoned from the date on which it is received in the Court, whether by institution or by transfer and shall end when it is no longer before the Court whether as a result of disposal or of transfer to another Court. The date of presentation of the plaint shall be considered as the date of institution, unless the plaint is returned for amendment before admission, in which case the date of institution shall be the date of institution after amendment. In a case received by transfer the duration shall begin from the date on which the case is received on transfer. In the calculation, the interval during which a case is in abeyance by reason of an application for review shall be excluded, as also the interval during which an appeal in which an order of remand has been passed was pending disposal in the superior Court. Revived cases shall be treated as if newly instituted. (2) In pauper suits the duration shall be reckoned from the date on which the application for permission to sue as pauper was granted and registered as a plaint.

**402.**

In the disposal ledger of miscellaneous judicial cases information regarding the number of cases of contempt of Court under Chapter XXXV of the Code of Criminal Procedure, disposed of by Civil Court shall be given in the remarks column.

**403.**

(1) In disposal ledgers of regular and miscellaneous appeals the numbers of appeals (a) re-admitted; and (b) admitted in forma pauperis should be noted in the remarks column. (2) Appeals disposed of on compromise should be returned in column (6) and the note "compromised" should be against them in the column of remarks.

**404.**

(1) In the disposal ledger of execution fraction of a rupee shall be omitted from column (9). (2) A payment made by the judgement-debtor to the officer of the Court armed with a process against him should be treated as payment into the Court whether the decree-holder is present or absent at the payment shown in one of the columns (10) to (21) of the ledger. A payment reported to be made to the decree holder, or made in the presence of the Judge but not recorded as certified should not be included in this ledger. (3) All payments out of Court which have been recorded as certified under Order XXI, Rule 2, during the pendency of an application for execution and whether a notice or other process has or has not been actually served or carried out should be shown in column (21). (4) On disposal of the connected application for execution in either of the above cases the payment should be represented by an entry in column (6) or (7) of the ledger in addition to that shown in one of the columns (10) to (21). Note. - For use of the terms "satisfaction obtained in full", "satisfaction obtained in part" and "wholly infructuous", see Appendix III.

**405.**

Insolvency petitions presented under Section 7, Provincial Insolvency Act, 1920, shall not be shown in the disposal ledger of miscellaneous judicial cases but in the disposal ledger of insolvency petitions, the form of which is identical with that of Statement VII, Part 1. The particulars required shall be obtained from the register of insolvency petitions. For statistical purposes petitions shall be treated as disposed of when they are ripe for inclusion in the list of insolvency petitions disposed of as prescribed in Rule 391 foregoing.

**406.**

(1) The particulars required for the insolvent estates ledger, the form of which is identical with that of Statement VII, Part 2, shall be obtained from the register of insolvent estates. (2) Fraction of a rupee shall be omitted. (3) Column (7) shall include the total amount of all debts included in the Schedule framed under Section 33 (1) of the Provincial Insolvency Act, 1920, with any interest allowed thereon. (4) Column (8) shall show only the total amount of claims which, having once been admitted and therefore included in the figure in column (7), are disallowed by Section 50 of the Act. (5) Column (9) shall show the total amount of creditors' claims satisfied during the year, whether they were admitted during or prior to the year to which the ledger relates. Note. - Claims satisfied signify dividend declared and include sums allowed under Sections 48 (2) and 61 (6) of the Act. (6) When an estate is finally wound up, although all claims are not fully satisfied, the unsatisfied

amount shall be excluded from the amount in column (12) and shown in column (11).(7)Sums placed in Civil Court Deposits for payment to creditors who have not turned up to receive their shares of the dividend or because the amount of the dividend could not be transmitted by post for want of a request to that effect by the creditor shall be excluded from columns (15) and (16) the amount so excluded being shown in a foot-note to column (16).(8)An estate shall not be shown in Part 2 until some assets actually reach the receiver, or the Court, as the case may be, and shall cease to be shown as soon as a final dividend has been declared and distributed under Section 64 of the Act, whether an order discharging the insolvent has been passed; in cases where legitimate expenses swallow up the assets, the estate shall cease to be shown in Part 2. When actual payment is made or the amount is placed in Civil Court Deposits, the proceedings in insolvency should be disposed of.

#### **407.**

With the monthly ledgers required by Rule 393 foregoing, each Judge exercising original jurisdiction shall submit to the District Judge a statement for his Court in the form of a monthly return of original civil work, and each Judge exercising appellate jurisdiction a statement in the form of a monthly return of appellate civil work. In preparing these statements the following instructions shall be followed :-(a)Suits and appeals re-admitted or received by transfer shall be counted as "Received during the month", as well as those newly instituted. The number of suits and appeals, executions, applications and miscellaneous cases received by transfer shall be noted in the remarks column against the Court concerned. Insolvency petitions shall be included among miscellaneous judicial cases.(b)All suits, applications and appeals struck off the file for any reason shall be treated as disposed of. Column (6) of the monthly return of original civil work shall include all suits which are shown in columns (6) to (11) of the disposal ledger of civil suits and column (7) those which are shown in columns (12) to (15) of the same ledger. The number of execution applications, miscellaneous judicial cases and miscellaneous appeals disposed of by transfer shall be noted in the remarks column against the Court concerned. The number of days spent in civil and criminal work shall be shown in the column of remarks.(c)Where one Judge tries by ordinary procedure as well as by Small Cause Court procedure separate entries shall be made in the monthly return of original civil work.

#### **408.**

(1)For purposes of the tahsilwar statement suits should be divided into the following classes, separate figures being given for each class of sub-class :-I. Suits instituted in ordinary Courts-(a)Cognizable by Small Cause Courts.(b)Others.II. Suits instituted in Small Cause Courts.Note. - A Court invested with the jurisdiction of a Court of Small Cause shall be regarded as a Small Cause Court.(2)A suit shall be taken into account once only, namely when first registered in any Court, re-institutions and transfers being ignored. When a plaint is returned for presentation to the proper Court the endorsement should distinctly state whether it has or has not been registered by the Court returning it.

#### **409.**

Each Judge shall submit to the District Judge not later than the 10th July and the 10th January a statement in the form of the half-yearly return of long pending cases. Note. - For purposes of the monthly and half-yearly return all cases shall be considered to be pending from the date of institution.

#### **410.**

In the monthly return of civil work is consolidated total of the entries for the corresponding period of the previous year shall be entered by the District Judge's statistical-writer.

#### **411.**

(1) In preparing Statement Nos. II to VIII the District Judges shall follow the instructions regarding the preparations of ledgers contained in Rules 393 to 506 foregoing. (2) In Statement Nos. II, IV, VI and VII separate totals shall be entered for cases instituted in the (a) Court of District Judge; (b) Courts of Civil Judges, Class I, (c) Court of Civil Judges, Class II, and (d) Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and other Courts trying cases by Small Cause Court procedure. (3) Statement No. III (Value Statement) shall contain only the total for all Courts in the district. (4) In Statement No. IV, Part I (Trial Statement) the total of column (4) shall agree with the total of column (18) of the Statement No. II (Description Statement). (5) Statement No. IV, Part 2 (Statement of Miscellaneous Judicial Cases), shall not include statistics of insolvency petitions.

#### **412.**

(1) In Statement No. V (Appeal Statement) where appeals are heard by more Judges than one the work of each shall be shown in a separate section, and the work done by all the Judges collectively shall be shown in separate line of entries. (2) There shall be a single line of entries for each Court from whose decisions appeals are preferred; the work of individual officers shall not be shown separately. (3) Appeals disposed of on compromise shall be returned in column (7), the number of such appeals being given in the remarks column.

#### **413.**

In preparing the tahsilwar statement the statistical-writer shall compile the figures submitted by Courts, and enter the totals by tahsils for the whole district in the appropriate columns of the statement. At the end of the calendar year the columns shall be totalled by tahsil and entered in a second statement and a copy of the latter statement shall be sent to the High Court.

**414.**

(1)The annual statement shall be accompanied by a note, dealing with all points in the statistics and administration of the district which appear to require the comment or elucidation. The note should be as concise as possible and, subject to an adequate survey of the ground to be covered should not exceed 1,5000 words.(2)The note should be properly paragraphed and indexed. Each paragraph or series of paragraphs dealing with a single topic should be given a subject-heading. The index should show the subject dealt with in each paragraph and the page or pages on which the paragraph is to be found. The note should be submitted in duplicate, one copy being on thick paper both sides of which may be used and the other on thin paper only one side of which should be used. A margin of one-third of each sheet should be left blank.Note. - In order to expedite the compilation of State return the annual statements Nos. II to VD3 shall be prepared in duplicate, and after the figures have been checked the office copy shall be sent to the High Court before the drafting of the note which accompanies the annual statement is begun. If it be found subsequently that any figures are incorrect, necessary correction shall be intimated to the Registrar.

**415.**

In the arrangement of subjects the note should generally follow the State report of the previous year. It may be divided into four parts : A-Tribunal B-Original Jurisdiction, C-Appellate Jurisdiction, and D-Miscellaneous. The nature of the subject that should be dealt with in each part is indicated below :-A. TribunalsThe number of Courts of each class open at the close of the year should be noted together with any fluctuations during the year.B. Original JurisdictionUnder this heading the number, value and description of suit should be commented on and any abnormal increase or decrease as compared with the figures of previous years should, as far as possible, be explained. The proportions in which the work has fallen to the share of each class of Courts, the average duration of cases and the state of pending file should be dealt with. It should also be stated whether there is a sufficient number of Courts to cope with the work. With regard to executions, the extent to which applications for execution have been fruitful should be discussed. Insolvency jurisdiction, the working of the Guardian and Wards Act, the Usurious Loans Act, the Central Provinces Money-lenders Act and the Central Provinces Reduction of Interest Act, resort to arbitration, the extent to which payment by instalment is decreed or allowed in execution and other similar topics of interest should also be dealt with in this part.C. Appellate JurisdictionThe working of Order XLI, Rule 11, state of the pending files and the average duration of appeals should be scrutinized and the statistics explained.D. MiscellaneousThe strength and quality of the local Bar, the working of the Nazarat, the copying branch and the record-room, the condition of the Court buildings, furniture and library, inspection made during the year, are among the subjects which should be dealt with in this part. The working of any new Act or any amendment of an existing Act or of any rules made or amended in recent years should be commented on.

**416.**

In order to obtain reliable data on which to base their explanation, District Judges should call upon selected Civil Courts to furnish a note embodying the result of their own experience in regard to the

various matters which have to be dealt with in the district notes.

#### 417.

District Judges shall send, in the prescribed form (No. 11-105) direct to the Superintendent of Stamps, Madhya Pradesh, an annual return of probate, letters of administration and certificates granted.

## Part IV – Fees and Costs Including the Rules and Orders Under the Court-Fees Act

Rules under the Court-fees Act relating to Fees chargeable for serving and executing Processes, remissions, cancellation of Stamps, etc.[Notification No. 4722, dated 24-6-1964.] [Published in M.P. Rajpatra, Part IV (Ga), dated 10-7-1964 at pages 249-267.] - In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of the Madhya Pradesh Civil Courts Act, 1958, and all other powers enabling, and in supersession of the existing rules, in force in Civil Courts in any part of Madhya Pradesh on the concerned subject, the following rules relating to Witness Expenses and Nazarats have, with the previous approval of the Governor, been made by the High Court of Madhya Pradesh, Jabalpur and are published for general information.(1)Process-fees

#### 418.

(1)This and the succeeding three rules have been made by the High Court under Section 20, Court Fees Act, 1870. The fees shown in the following schedule shall be charged for serving and executing the different processes-

### of Process-fees

Article 1In suits triable by a Court of Small Causes and in all other suits and proceedings, including execution proceedings, if any Court, including a Revenue Court.

Name of Process	Amount leviable	
	Not exceeding Rs. 500 in value	Exceeding Rs. 500 but not exceeding Rs. 1000 in value.
(1)	(2)	(3)
(a) For Personal or substituted service, in respect of each person.	Rs. np.1.00	Rs. np.1.25
(b) For service of warrant of arrest, in respect of each person.	2.00	2.50
(c) For attachment of movable property, in respect of	2.00	2.50



each process.

(d) For attachment of immovable property under Order XXI, Rule 54, Civil Procedure Code.	3.00	3.00
(e) For a proclamation of sale under Order XXI, Rule 66-(i) when the property to be sold is movable property, (ii) when the property to be sold is immovable property.	2.00 3.00	2.50 3.50
(f) For a warrant for delivery of immovable property.	2.50	3.00
(g) For any process not specifically provided for.	1.00	1.25

Article 2 In suits and in all proceedings, including execution proceedings, of any Court.

Name of Process	Amount leviable		
	Exceeding Rs. 5000 but not exceeding Rs. 10000 in value	Exceeding Rs. 10000 in value	
(1)	(2)	(3)	(4)
(a) For personal or substituted service, in respect of each person.	Rs. nP1.50	Rs. nP2.00	Rs. nP2.50
(b) For service of warrant of arrest, in respect of each person.	3.00	3.50	4.00
(c) For attachment of movable property, in respect of each process.	3.00	3.50	4.00
(d) For attachment of immovable property under Order XXI, Rule 54, Civil Procedure Code.	4.00	4.50	5.00
(e) For a proclamation of sale under Order XXI, Rule 66-(i) when the property to be sold is movable property. (ii) When the property to be sold is immovable property.	3.00 4.00	3.50 4.50	4.00 5.00
(f) For a warrant for delivery of immovable property.	4.00	5.00	5.50
(g) For any process not specifically provided for.	1.50	2.00	2.50

Note 1. - When personal or substituted service on several persons residing in the same village or in the same ward of a municipality or cantonment is required, and the processes are applied for at the same time, for each person after the first-75 np, irrespective of the value of the suit or proceeding.

Note 2. - Where the property to be attached lies in different villages or different wards of a municipality or cantonment, separate processes shall be issued and charged for in respect of each village or ward. (2) The process-fee in contested applications for probate and letters of administration and applications for the revocation of probate and letters of administration which are registered as suits, shall be according to the value of the property in dispute. (3) Process-fees in case not otherwise provided for shall be according to the scale prescribed for suits not exceeding Rs. 500 in value. (4) The process-fee in appeals and revisions shall be the same as in the original cases, including concessional fee for service on several persons; except that in appeals and revisions before

the High Court the minimum rate of fee shall be Rs. 2 for each process.

#### **419.**

Any party desiring the services of a process-server for the service of a process otherwise than in the manner and at the time of such process, would normally be issued, or requiring such service for a time beyond the period which would ordinarily suffice for service and execution shall, unless the Court by order in writing otherwise directs, pay an additional fee of one rupee per diem for the time that the services are so required. In calculating this fee one day should be allowed for service of the process and one day for each twelve miles of the journey going to and returning from the place of service, unless the person requiring the services satisfies the Nazir or official concerned that he will pay the conveyance charges of the server, in which case only one day shall be allowed for the journey to and one day for the journey from the place of service.

#### **420.**

Notwithstanding Rule 418 foregoing no fee shall be charged for serving or executing, (a) any process which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority, (b) any process issued a second time in consequence of a mistake for which the Court or any of its officers is responsible, or in consequence of an adjournment made otherwise than at the instance of a party, (c) any copy of a summons, notice, order, proclamation or other process affixed in a court-house or in any other Government office, (d) any copy of warrant, order or certificate affixed under Order XXI, Rule 36, 54 or 96 when the fees chargeable under Article 1 (d) or (f) of Rule 418 (1) foregoing have been paid; (e) any notice issued by a Court under Order XXI, Rule 2, in relation to an award made in the course of conciliation proceedings held with the sanction of the State Government; (f) any process issued at the instance of the Collector by the Civil Court in proceedings under Section 25 of the Central Provinces Land Alienation Act, II of 1916.

#### **421.**

In respect of sales, a fee by way of poundage shall be charged upon the full amount of purchase money as follows :-(i) Where the sale relates to an interest in land used for agricultural purposes or of houses or other immovable property connected with such land or interest and used for agricultural purposes-On the first Rs. 1,000/- at 5 per cent. On the next Rs. 4,000/- at 3-1/2 per cent. On the rest, at 2 per cent. (ii) Where the sale relates to other property-(a) If the property be a negotiable instrument or a share in any public company or corporation, on the nominal value-1 percent on the first Rs. 1,000 and 1/2 percent on the rest. (b) In the case of other property-5 percent on the sale proceeds: Provided that no poundage fee shall be charged-(i) in respect of sales by a Receiver in insolvency matters, and (ii) in respect of property sold in execution of a decree by a liquidator appointed under Section 70 (1) of the Madhya Pradesh Co-operative Societies Act, 1960, when the property is purchased by the Co-operative Central Bank holding the decree.

**422.**

The mode of payment of process-fees under Rules 418 and 419 is laid down in Rule 46 foregoing. No process for issue of which payment of a fee is required, shall be drawn up for service or execution until the fee has been paid. A notice in English and the Court language of the district shall be exhibited in a prominent place in every Court stating that all process-fees are to be paid in Court-fee stamps and not in cash.

**423.**

On receipt of an application or memorandum referred to in Rule 46, the process-writer shall see that the proper fee has been paid and shall punch the stamps before drawing up the process and sending it with the application or memorandum to the Nazir for execution. The Nazir shall again see that the requisite stamps have been affixed and punched, and shall himself punch them with a distinctive punch. After issuing the process he shall return the application or memorandum to the Court for being filed with the record.

**424.**

When a Court sends a process for service or execution to any Court in India, the fees shall be levied in stamps in accordance with the rates prescribed in Rule 418 and the Court shall certify on the face of the process or in the order for transmission of the process that the fee has been levied.

**425.**

A process issued by any Court in India shall be served and executed free of charge by any Court to which it may be sent, if it be certified on the process that the proper fee has been levied.

**426.**

(1) The fee payable by way of poundage on the full amount of the purchase money shall be paid by stamps, which shall be affixed to the first application, or memorandum referred to in Note 1 below Rule 466 (5), for payment of such purchase money out of Court, whether it be or be not filed by the person who obtained the order of sale, and whether it extends or does not extend to the whole of the purchase-money. If an application be filed, it must, in addition to the requisite stamps for the poundage fee, bear such stamps, if any, as are needed for its own validity. (2) The party paying the poundage fee shall recover the amount of it out of the purchase money prior to the distribution of the purchase money among the persons who are entitled to it.

**427.**

When an application or memorandum for payment of purchase money is filed, the Reader or Execution Clerk, after obtaining from the Nazir a report that the sum is in Civil Court deposit, shall

see that the poundage fee has been correctly paid by stamps affixed to the application or memorandum and that an application, if filed, bears the stamps requisite for its own validity, and shall thereupon punch the stamps. The fee shall be entered in the Register of processes and Process-fee, by the process-writer who shall then endorse on the application or memorandum a report stating that this entry has been made and giving the number of the connected warrant of sale. If the Court orders payment, the Reader or the Execution Clerk shall prepare the necessary voucher and note on the reverse of the inner foil thereof the date on which the payment of the poundage fee was entered in the Register of Processes and Process-fees. [Also see Rule 466 (5).]

#### **428.**

All process-fees and fees paid by the way of poundage shall, in all proceedings, be deemed and treated as part of the necessary and proper costs of the party who pays them.

#### **429.**

The judge of each Court shall see that the rules regarding process-fees are observed and though he may not be able to examine all records, he shall make it a rule to examine some of them from time to time with a view to see that the proper process-fee stamps have been affixed and that they have been properly cancelled.

#### **430.**

The postage charges on all process required to be transmitted by post, together with the registration fee, if the postal packet is required to be registered, should be paid by the Court by means of service postage stamps without any additional charge being levied for the same from the parties at whose instance the process is issued.[Explanation.] [Added by Notification No. 2492-3-1-5-57-CH-20, dated 23-5-1995.] - Summons which are regarding to be issued under Order 5 Rule 19-A of the Code of Civil Procedure 1908 the charges for the registered post acknowledgement shall be borne by the party concerned.

## **2. Reductions and Remissions of Court-Fee by State Government Under Section 5 of the Court Fees Act**

#### **431.**

The State Government has made the following reductions and remissions in the fees chargeable under the First and Second Schedules of the Court Fees Act, 1870 namely :-(1).....(2)The fees chargeable on applications presented to a Collector for refund of the amount paid to the State Government for stamped paper which has becomes spoiled or unfit for use, or is no longer required for the use and on applications for renewal of stamped paper which has become spoiled or unfit for use.(3)When a plaint disclosing a reasonable case on the merits if presented to any Civil Court in such a form that the presiding Judge without summoning the defendant, rejects it not for any

substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of stamp on the plaint shall be refunded on presentation of an application to the Collector together with a certificate from the Judge who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded.(4)to (6).....(7)The fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil Court for the private use of persons applying for them :Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer.(8)The fees chargeable, under paragraph 4 of clause (a) and paragraph 6 of clause (b) of Article 1 of the Second Schedule on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 23 in amount :Provided that the application is made within three months of the date on which the deposit first become payable to the party making the application.(9)to (13).....(14)The fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office.(15).....(16)The fee chargeable on an application for the repayment of a fine or of any portion of a fine the refund of which have been ordered by competent authority.(17)The fees chargeable on applications for copies of documents detailed in item 14 supra.(18)to (21).....(22)The fees on the property of (1) any person subject to the [Navy Act, 1957 (62 of 1957), the Army Act, 1950, or the Air Force Act, 1950] who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service or dies from wounds inflicted, accidents occurring or disease contracted while on such service and (2) any person being a Government servant, Civil or Military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of those duties :-(a)where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property.(b)where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000.(c)where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property :(23)to (25).....(26)The fees chargeable on applications presented to Courts with reference to Rule 2, Order XXI, First Schedule, Code of Civil Procedure, 1908 (V of 1908), in relation to awards made in the course of conciliation proceedings held with the sanction of the State Government.(27)to (31).....(32)The fees chargeable under Article 6 of the Second Schedule to the Court-fees Act, 1870 (VII of 1870), in respect of security bonds hypothecating property executed in pursuance of orders of the Courts under of Code of Civil Procedure, 1908 (V of 1908).(33)to (35).....(36)The fees chargeable under Article 9 of the First Schedule to the Court fees Act, 1870, on copies of documents referred to therein filed with any petition or appeal or revision made by any Government servant in the manner mentioned in item 30 above.(37)The fees chargeable in respect of Indian probates, letters of administration or succession certificates on the share or interest of a deceased member of a company formed under the Companies Act, 1956 (1 of 1956), whose name was registered in a branch register kept in any State or country outside India in accordance with the provisions of Sections 157 and 158 of the Act and who was, at the time of his death, domiciled elsewhere than in India.(38)to (40).....(41)The difference between the court-fees chargeable in accordance with Section 8 of the Government Savings Banks Act, 1873, on

the probate of letters of administration, or certificate, if any, granted under the Indian Succession Act, 1925, and the court-fees as would be chargeable, if for the words 'three thousand rupees' the words 'five thousand rupees' had been substituted in that section.(42)to  
(44).....(45)Applications for the grant of letters of administration in respect of estates of persons killed by enemy action-

**1. The fees chargeable on appeals from orders under Section 47 or Section 144 of the Code of Civil Procedure, 1908 (V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule.**

**2. When a part of a estate paying annual revenue to the State Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of preemption in respect of a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed seven and half times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share.**

### **3. Use Of Adhesive And Impressed Stamps**

#### **432.**

The following instructions on the use of adhesive and impressed stamps issued under the Judicial Department Notification No. 1823-1428-XIX, dated the 10th October, 1941, are reproduced for the information and guidance of the Judges(1)When, in the case of fee amounting to less than Rs. 25 the amount can be denoted by a single adhesive stamp, such fee shall be denoted by the single adhesive stamp of the required value, if the amount cannot be denoted by a single adhesive stamp or if a single adhesive stamp of the required value is not available, a stamps of next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional adhesive stamps to make up the required amount of the fee. These additional stamps should also conform to the principle that a stamp of next lower value shall be used in preference to stamps of smaller value.(2)In the case of fee amounting to or exceeding Rs. 25 the fee shall, if possible, be denoted by a single impressed stamp of the required value. If the amount cannot be so denoted or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed and adhesive stamps to make up the required amount of the fee. These additional stamps should also conform to the principle that a stamp of next lower value shall be used in preference to stamps of smaller value.(3)If a stamp of a particular value which should be used under Rules (1) and (2), is not available at the nearest treasury or sub-treasury or from the nearest vendor authorised to

sell stamps of that value, the required value may be made up by the use of two or more stamps available at such treasury or sub-treasury or from such vendor, a stamp of the next lower value available being used in preference to stamps of smaller value. In every such case, a certificate stating the value and number of the stamps required but not available shall be given by the treasury officer or sub-treasury officer or vendor, as the case may be.(4)Whenever a treasury officer or sub-treasury officer finds that the stock of stamps of a particular value is surplus, he may issue such stamps in preference to stamps of a higher value in order to adjust the surplus stock. Stamps issued under this rule shall be used as laid down in Rule (3). In every such case the treasury officer, sub-treasury officer or vendor, as the case may be, shall give a certificate stating the value and number of the stamps required but not issued in order to adjust the surplus stock.(5)Any adhesive stamps used with impressed stamps shall be affixed to the impressed stamp of the highest value employed in denoting the fee.(6)When a Judge holds that a document is insufficiently stamped and, under the provisions of Section 149 of the Code of Civil Procedure, 1908, allows the deficiency to be paid, such additional impressed stamps or adhesive stamps or both as are necessary under the above rules to represent the amount of the deficiency shall be filed. On each impressed stamp so filed a reference to the insufficiently stamped document shall be endorsed.

### **433.**

The following further instructions on the use of stamps are reproduced from page 187, Central Provinces Stamp Manual, for information and guidance-(1)With a view to facilitate the examination, under Section 6 of the Court-fees Act, of stamp fees paid on any document, any adhesive label or labels used in addition to an impressed stamp in order to make up the required value, should be affixed to the right hand upper corner of the first page of the document, immediately below the engraved portion of the stamp paper.(2)When two or more impressed stamps are use to make up the amount of the fee chargeable under the Court-fees Act, a portion of the subject-matter shall ordinarily be written on each stamped sheet. Where this is impracticable or seriously inconvenient, the document shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be punched and cancelled by the Court and filed with the record, a certificate being recorded by the Court on the face of the first sheet of the document to the effect that the full court-fee has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the document.(3)Documents should be written on that side of the paper only which bears the stamp. When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamps, so much plain paper may be joined thereto as may be necessary for the complete writing of the document and the writing on the impressed stamps and on the plain paper should be attested by the signature of the person or persons executing or signing the document.Note. - Officers should not refuse to receive documents which have not been prepared or stamped in the manner directed by the above rules. But they should impress upon parties and pleaders the necessity of observing the said rules if they wish to protect their own interests and avoid delay.

**434.**

The Court-fee payable on probate of a will, letters of administration, or on a certificate under the Indian Succession Act, 1925, are not to be calculated on even hundreds of rupees. Such fees are leviable under Articles 11 and 12 of Schedule I of the Court-fees Act as amended in their application to the State of Madhya Pradesh and must by the terms of those Articles be calculated on the actual amount or value of the property concerned.

**435.**

When an order remanding a suit under Order XLI, Rule 23, is set aside on second appeal, revision or review, and the appellate Court which passed it is required to decide the appeal on the merits, it shall not rehear the appeal until the court-fee refunded under Sec. 13 of the Court-fee Act has been repaid.

**4. Cancellation of Court-Fee Stamps****436.**

The following material instructions on the cancellation of court-fee stamps are adapted from the Central Provinces and Berar Stamp Manual-A. Documents furnished by a public officer.(1)Cancellation of Court-fee labels on copies, and other documents issued from public offices or Courts. - Every court-fee label attached to any copy, or other document denoting copying fees as well as court-fees, if any under Article 6, 7 or 9 of Schedule I to the Court-fees Act, 1870, issued from any Court or office, shall, before issue of such copies, or other documents, etc, be cancelled by such officer as the Court or the Head of the Office may appoint for this purpose, by-(a)punching out a "C" hole in the centre of the left half of the label, and(b)putting the date of issue and signature across the label, so as to extend to the paper on either side of it.(2)Cancellation of court-fee labels used for payment of stamp duty under the Indian Stamp Act, 1899 - Every court-fee label affixed under Rule 17 (c) of the Indian Stamp Rules, 1925, on copies of maps or plans, printed copies and copies of, or extracts from, registers given on printed forms, certified to be true copies (e.g., true copies or extracts of baptismal, marriage and burial certificates, etc.), shall be cancelled by the officer issuing them by writing his name and date across the label.B. Documents received by a public officer.(3)Cancellation of impressed Court-fee stamps. - On the presentation in any Court or office of a document written on an impressed court-fee stamp, it shall be the duty of the officer, referred to in Rule 12 below, after satisfying himself that the stamp is genuine and that the document is fully stamped to punch out every figure-head on the impressed portion of the stamp. The cancellation of the stamp is then complete.Note 1. - The words "presentation of the document" do not include the case of the presentation of stamp on which refund or renewal is claimed.Note 2. - It should be carefully noted that ascertainment of the sufficiency of the stamp should precede cancellation. Cancellation indicates that the cancelling officer is satisfied that the document is stamped sufficiently and is also "properly" stamped in other respects.(4)Cancellation of Court-fee labels. - On the presentation in any court or office of a plaint, petition, or other document bearing a court-fee



label or labels it shall be the duty of the officer, referred to in Rule 12 below, after satisfying himself that the label or labels are genuine and have not been previously used, and that the document is fully stamped, to-(a)punch out the figure-head of each label, leaving the amount designated untouched;(b)cancel each label by a rectangular metal date-stamp bearing the following inscriptions :- (i)name of the Court or office;(ii)name of the place;(iii)date, month and year; and(iv)the word "cancelled".Violet ink shall be used with this stamp.(c)note on the right hand top corner of the document, in ink, the value of the label or labels, which it bears, and initial such note.C. Checks on the observance of the rules in regard to cancellation.(5)Cancellation by record-keeper. - It shall be the duty of the record-keeper of the Court or office to-(a)examine every document which comes into his custody in order to ascertain firstly whether all stamps and labels have been cancelled as required by the above rules, and secondly, whether the value of label or labels, if any, which it bears, corresponds with their values as noted in the receiving court or office, and(b)cancel each label by a circular date stamp bearing date, month and year and the name of the Court or office concerned.Black ink shall be used with this stamp.(6)It shall be the duty of the record keeper of the Court or office to report to the officer to whom he may be immediately subordinate, every case in which he finds-(1)that the stamp has not been cancelled in the manner prescribed above, or(2)that the value of the label or labels on any document does not correspond with their values as noted in the receiving court or office.(7)It shall be the duty of the officer receiving a report under Rule 6, to submit the case for the orders of the District Judge through the officer-in-charge of the record-room or other head of the office.(8)In every District Court it shall be the duty of the Clerk of Court once a month to satisfy himself, by inspection of the records lodged in the record-room during the previous month that the orders in Rules (1) to (5) above are being carried out.(9)In every District Court it shall be the duty of the District Judge or the officer-in-charge of the record-room to make a general inspection of the record-room, not less than once in every six months, and satisfy himself that the orders contained in the above rules are being carried out.(10)An inspection book shall be kept in the office of the District and Sessions Judge in the prescribed form (No. XXI-13/Stamp English) and a note will be made therein of all inspections made under Rules (8) and (9) When the inspection is made by the Clerk of Court the book shall be sent to the District Judge for information and orders.(11)The presiding Judge of a Court, other than the District Court, where a record-room is maintained, shall arrange for a periodical inspection of the records of his Court as nearly as may be in the manner prescribed by Rules (8) and (9).D. Miscellaneous(12)Cancelling officer. - The duty of cancelling impressed court-fee stamps and Court-fee labels in the manner prescribed in Rules (3) and (4); shall be entrusted to the reader to the Court or to any officer appointed thereto by the head of the office, excepting that the duty shall not be assigned to any person who is charged with the sale of Court-fee stamps.(13)Destruction of punched out pieces. - The figure-heads or pieces of stamps or labels removed by punching shall be destroyed by burning or some other effective means.

#### **437.**

Punches for effecting the cancellation in the Nazarat prescribed in Rule 423 foregoing, in respect of process-fees, should mark the letter No.

**438.**

The Officer of the Court issuing copies, certificates or other similar documents shall, before issue, cancel the labels and punch the court-fee stamps affixed to them together with the court-fee stamps to such copy by law [See Articles 6, 7, 8 and 9 of Schedule I of the Court-fees Act, 1870, as amended by the Central Provinces Courts (Amendment) Act, 1935.]

**439.**

Judges should make an occasional inspection of documents that have been filed in the records of pending and disposed of cases, in order to ascertain that the proper court-fee has been realized and that the stamps have been properly punched and defaced, and have not been subsequently removed from the documents on which they have been used. (Also see Appendix V.)

**Chapter 21****Costs-Witnesses expenses****440.**

(1)For the purpose of travelling and other expenses, witnesses shall be divided into the following classes-'A' Class-Labour (Skilled and unskilled). 'B' Class-Artisans, cultivators, shop-keepers, and other similar persons. 'C' Class-Persons of superior ranks.(2)The diet-money payable to members of each class per day shall not ordinarily exceed the rate given below :-'A' Class-1.25 P.'B' Class-2,00 P.'C' Class-5,00 P.(3)In special cases if the rates above prescribed appear to be insufficient, the Court may require such sums as appear reasonable to be paid. The discretion thus allowed shall be used sparingly, and such special sums shall not be paid except in cases where they are clearly necessary, the reasons for making them being recorded by the Court in the order-sheet.(4)Diet-money shall be given not only for the period of actual attendance, but also for any reasonable time spent in the journey to and from the Court, the mode of conveyance available being taken into consideration.(5)In addition to the diet-money admissible under the preceding rules if a witness resides at a distance from the Court, and if the journey cannot be performed on foot, or if the age and habit of life of the witness render it impossible or unsuitable for him to walk to the Court, a sum shall be paid to him to meet his travelling expenses at the rates given below(a)Where the journey is wholly or partly by road the actual charge for reasonable conveyance for the road journey to and from the Court upto a maximum of 16 P. per Kilometer.(b)Where the journey is wholly or partly by rail, railway fare each way for the railway journey according to the following Table :-'A' Class-Third Class fare.'B' Class-Third Class fare.'C' Class-Such railway fare as may appear fair and reasonable to the Court according to the class in which the witness normally travels or is expected to travel.(6)When it is found necessary to order a witness to appear a second time, the Court shall decide on a consideration of the circumstances of each case whether the witness can reasonably be expected to remain at the place where the Court is located or whether he should go back to his home and return for the next hearing. In the former case he should receive diet money for each intervening day until the adjourned hearing and in the latter travelling expenses and

diet money for the journey to and from his home on the same scale as for the first hearing.(7)If a party wishes to summon a Finger Print Expert of the Criminal Investigation Department or a Government Examiner of Questioned Documents of the State Government he shall deposit a special fee of Rs. 15 in addition to the diet money admissible under sub-rule (2) or (3), as the case may be, and an allowance for travelling expenses equal to the travelling allowance other than daily allowance to which the witness would be entitled under the Fundamental Rules if the journey to and from Court were a journey on tour.The fee of Rs. 15 deposited by the party shall be credited direct into the treasury by the Court under head "XIX-Miscellaneous Police Receipts".[Vide Appendix IV-Part II]Rules for summoning the Government Examiner of Questioned Documents Intelligence Bureau, Ministry of Home Affairs, "Dormers", Simla-1, are given in Appendix IV-Part I(8)When a party requires the services of an officer of the Security Printing Press, Nasik Road, as a witness in his public capacity, the Court concerned should ascertain from the officer or from the Security Printing Press Office his pay and travelling allowance, and should direct the person to deposit the fees necessary to cover the pay and travelling allowance.(9)When a party wishes to summon any public officer not specifically provided for in the rules to give evidence as an expert, he shall state so in his application for summoning him as a witness and shall in addition to travelling and other expenses admissible under the rules deposit such special fee not exceeding Rs. 250 per day as the Court may fix under sub-rule (2) of Rule 2 of Order XVI, Civil Procedure Code, as remuneration for the time that would be occupied by him both in giving evidence and in performing any work of an expert character necessary for the case.The special fee so deposited by the party shall be credited to Government under the head "XVII-Administer of Justice-Miscellaneous Fees and Fines."

#### **441.**

When Government as a party to a case asked for a summons to one of its servants for appearance in Court as a witness it is not required to deposit in Court anything in account of diet money and travelling allowance of the witness. In no case should any money deposited by a party for calling a Government Servant as a witness accompany the summons.Note. - Attention of the lower Courts is invited to amendments made by the High Court to Rules 2, 3 and 4 of Order XVI, Civil Procedure Code.

#### **442.**

The money deposited by a party for defraying the travelling and other expenses of a Government servant who is summoned by the party as a witness should be credited to Government under the head "XVII-Administration of Justice-Miscellaneous Fees and Fines."When a Court requires any money for payment of the expenses of a Government servant who has appeared as a witness it shall be paid from contingencies and charged to the head "Diet-money and Travelling Expenses of witnesses" under "21C-Administration of Justice-Civil and Sessions Court-Countersigned contingencies, diet-money and travelling expenses of witnesses". If due to the non-appearance of the witness the amount credited into the treasury remains undisbursed and is claimed by the party the refund should be made from the treasury on a voucher (Form No. 1-22) which should specify the original credit made and should be signed by the Judge.

**443.**

(1) According to Supplementary Rule 112 under Fundamental Rule 44, an officer of Government who is summoned to give evidence of facts which have come to his knowledge or of matters with which he has had to deal in his public capacity in a civil case to which Government is a party is entitled to draw travelling allowance from Government. In such cases the Court should give him a certificate in Form No. 17 in Schedule No. 1-Accounts specifying the dates on which the officer attended and the amount, if any, paid to him by the Court. This certificate will be attached to the travelling allowance bill which the officer may submit through his office. (2) The Central Government and all the State Governments except West Bengal have entered into reciprocal arrangements that a Government servant including a railway servant who is summoned to give evidence of facts which came to his knowledge in the discharge of his public duties or to produce official documents in a suit in which the Government is not a party will be paid travelling expenses etc., by the Courts at the rate admissible to the Government servants for a journey on tour. In order to enable the Court to assess the amount admissible to him the Government servant should carry to the Court a certificate duly signed by the Controlling Officer of the Government servant showing the rate of travelling and daily allowance admissible to him for a journey on tour. If the Government servant is his own Controlling Officer, the certificate will be signed by him as such.

**444.**

A Government officer summoned to give evidence in circumstances other than those mentioned in Rule 443 is not entitled under Supplementary Rule 113 under Fundamental Rule 44 by reason of his being an officer of Government to any allowances other than those admissible by the rules of the Court. Such officer will be allowed by the Court his travelling expenses in accordance with the above rules, care being taken that nothing is disbursed to him by way of subsistence allowance.

## **Part V – Nazarats, Copies and Copying Section**

### **Chapter XXII**

#### **Nazarat**

##### **1. General**

**445.**

The Nazarat establishment consists of the Nazir, Naib-Nazirs, Sale Anuns and Process-servers, the Nazir being the head of the establishment in each district.

**446.**

Permanent process-servers will be appointed by the District Judge and temporary process-servers will be employed by the Nair or Naib-Nazir from the list of approved person which will be maintained by the District Judge. Every effort should be made to secure honest men. Every promotion will be conditional on acquiring satisfactory knowledge of the rules regarding the service and execution of processes. Permanent process-servers may be transferred within the district at the discretion of the District Judge subject to the process-servers being proficient in the language of the area to which he is transferred.

**447.**

The number of permanent process-servers should be such as to allow their being continually employed. Vacancies among them should not be filled in as a matter of course. If on the occurrence of a vacancy is found that the volume of work to be done during the least busy session of the year and the supply of temporary men regularly available are such as to make a reduction feasible, that reduction should be promptly effected. The monthly scrutiny of the server's work prescribed by Rule 88 will be of great value in reaching a decision on modification of the staff. When a vacancy does arise in the permanent staff temporary men, who have given satisfaction, should provided they are duly qualified under Role 446, be given preference.

**448.**

Every Nazir, Naib-Nazir, Amin, Process-servers and Process-writer whether permanent or officiating, shall execute a bond in the prescribed form and give the requisite scrutiny. Note. - "Process-writer" includes all persons who perform the duties of the process-writer.

**449.**

The amount of security to be given by Nazirs and Naib-Nazirs shall be fixed from time to time by the District Judge according to the circumstances of each district. A sale amin shall furnish security in the sum of Rs. 500 and a process-writer or process- server in the sum of Rs. 100.

**450.**

Officials drawing Rs. 110 or more per month shall give security in cash or in National Savings Certificates, unless in the case of persons appointed to officiate in a post they are permitted by the Honourable Chief Justice and in other cases are specially permitted by the State Government to furnish personal security. Other officials shall either furnish the security in cash or in National Savings Certificates or shall execute personal security bonds with two securities for the requisite amounts.

#### **451.**

Officials who are required or desire to give security in cash may instead of depositing the whole amount in a lump sum, deposit it by monthly deductions of 10 per cent from their pay. The amount to be deducted shall be rounded to the nearest rupee, the fraction of a rupee being ignored if less than 50 P. or rounded to the next higher figure if 50 P. or more. In such cases a personal security bond with two sureties, to remain in force until such time as the accumulation of monthly deposits reaches the required figure, shall be executed. When the deposit is complete, the bond shall be cancelled and a cash security bond substituted.

#### **452.**

The deduction made under Rule 451 shall forthwith be deposited in the post office savings bank, a separate account being opened for each of the officials concerned. These deductions and deposits shall be accounted for in the general cash account and the classification register. The Nazir at headquarters and the Naib-Nazir in charge of the Nazarat at an out-station shall maintain a list of officials from whose pay deductions are being made under the preceding rule. Inspection Officers shall verify that the deductions are regularly made and the amount regularly credited into the savings bank and duly brought into account.

#### **453.**

Security given in cash shall be deposited in the post office savings bank in accordance with the rules regarding security deposits issued by the Postal Department. The interest of money thus deposited shall be paid to the depositor. Note. - If the depositor desires to utilise his security deposit in the purchase of National Savings Certificates, it shall be withdrawn by the District Judge and invested accordingly. National Savings Certificates may be accepted as security deposits for the amounts at which they were purchased, and not at their face value, provided the depositor formally transfers them with the sanction of the Post-Master General, to the District Judge.

#### **454.**

It shall primarily be the duty of the Nazir at headquarters, and of Naib-Nazir-in-charge of the Nazarat at an out-station, to see that security as provided for in these rules is taken. Whenever an official is transferred from another station or to another post in the same station the Nazir or Naib-Nazir shall check whether the security bond furnished will remain valid for the station or the post to which the official is transferred and shall, if necessary, obtain a fresh bond.

#### **455.**

Whenever the solvency of a surety is to be verified a statement of assets and liabilities declared to be true and complete to the best of his knowledge and belief should be obtained from the surety and verified as far as possible, before he is accepted. It should be seen that only realizable assets are

taken into consideration; and land which cannot be attached or sold, should not be taken into account.

**456.**

The officer-in-charge of the Nazarat or the Senior Judge at out-station shall satisfy himself at the time a bond is accepted and early in each succeeding year that each of the sureties, is, and continues to be, solvent for the whole amount mentioned in the bond.

**457.**

Temporary process-servers who have not given security should not be entrusted with any considerable sum of money. The Nazir at headquarters and the Naib-Nazir-in-charge of the Nazarat at an outstation shall be responsible for any loss caused by the dishonesty of a temporary process-server who was appointed by him or on his recommendation.

**458.**

(1) With the exception noted below any defalcation or loss of public money, stamps, or other property discovered in the Nazarat or any other section of office should be immediately reported to the Accountant-General and the Government in the Finance Department through the High Court even when such loss has been made good by the person responsible for it. Exception - Petty cases, i.e., cases involving losses not exceeding Rs. 200 each need not be reported to the Accountant-General and the Government in the Finance Department, unless they are, in any case, important features, such as fraud, dishonesty, etc. which merit detailed investigation and consideration. (2) When the matter has been fully investigated a further and complete report should be submitted of the nature and extent of the loss, showing the errors or neglect of rules by which such loss was rendered possible and the prospects of effecting a recovery. The report should also offer suggestions as to the amendment of the rules and note any suspicion of dishonesty, stating how far it may have been substantiated, and describing the action taken or proposed to be taken in regard to the official implicated. The report should be submitted through the High Court and the Accountant-General, who will forward it to the State Government with as little delay as possible. The submission of such report does not debar the District Judge from taking any other action which may be deemed necessary.

## **2. Account And Other Registers**

**459.**

The following registers shall be maintained for every Nazarat by the Nazir, Naib Nazir or official performing the duties of Nazirs or Naib-Nazir and they shall be preserved for the periods specified below after they have been completely filled in :

Name of Register	Number of form and schedule on which it is borne	Period for which to be preserved	
(1)	(2)	(3)	
1.	Register of property passing into or through the Nazir's hands under orders of the Civil Court.	II-46	14
2.	Register of property passing into or through the Nazir's hands otherwise than under order of the Civil Court.	II-47	6
3.	General Cash Account	II-48	14
4.	Contingent Cash Account	II-49	5
5.	Classification Register	II-50	6
6.	Register of Receipts of Returned Diet-money.	II-51	6
7.	Register of Repayment of Returned Diet-money.	II-52	6
8.	Register of Civil Court Deposit Receipts	II-97	35
9.	Registers of Repayment of Civil Court Deposit.	XXII-96	35
10.	Station Dak Book.	II-34	3
11.	Dak Book for Processes sent by Post.	XV-79	3
12.	Files of Process-server's Work-tickets.	II-53	3
13.	Register of checking of Process Server's work by Sale Amins.	II-54	2
14.	Register of work done by Process-servers.	II-55	5
15.	Report of work done by Sale Amins	II-56	5
16.	Book of Receipts for Money	XV-99	6
17.	Remittance List	II-57	6
18. [ [Substituted by Notification No. 9165, published in M.P. Rajpatra, Part IV (Ga), dated 25-12-1964 at page 964.]	File Book of chalans of money sent to treasury.	XX(a)-A-7 and XX(a)-A107 where there are banking treasuries	6]
19.	Duplicate Book of Receipts for Money paid by the Nazir.	II-58	5
20.	Register of Security Deposits	XV-6	1



**460.**

Register of property passing into or through the Nazir's hands under orders of the Civil Court-(1) In this register articles of movable property only should be entered. Money, whether realised by attachment, or by sale of immovable property, or, whether paid to the Nazir in execution of a decree, e.g., by a judgement-debtor against whom a warrant has issued, should not be entered in the register but should be entered in the Register of Civil Court Deposit Receipts.(2)When articles such as clothes, utensils, etc. supplied by, or at the cost of the decree-holder are received by the Nazir on a judgement-debtor's release from jail they should be entered in this register. A notice should then be issued to the decree-holder to take them back within a certain time and if he fails to do so in spite of the service of the notice or if he is untraceable they should be treated as unclaimed property and dealt with under Sections 25 to 27 of the Police Act.(3)When any property is released it should be shown as disposed of only when it is actually made over to the person entitled to it. If after due notice the person entitled to it fails to take back any property, it should be dealt with as laid down in the sub-rule (2) of this rule.Note. - The date on which an order of release is received by the Nazir should be noted in the remarks column for facility of reference. The date and manner of disposal should be noted in column (9) after the property is actually made over to the person concerned, and signed by the Nazir. Valuables in charge of the Nazir should be delivered to the judgement-debtor in the presence of the Judge or officer-in-charge or the Nazarat and the entry in column (9) should be signed by him.(4)At the end of each quarter the Nazir should prepare an abstract of the pending items and place the register before the officer-in-charge of the Nazarat for scrutiny. The Nazir should also send regular reminders to the Court concerned for orders of disposal of the pending items, and scrutinize, with special care, the reports on long pending items. He will bring any cases of unnecessary delay to the notice of the officer-in-charge of the Nazarat who will refer them for the orders of the District Judge.Note 1. - Valuable articles such as jewels, etc., should be verified at least once a quarter by the officer-in-charge of the Nazarat and at inspection by the District Judge.Note 2. - "Nazir" includes Naib-Nazir or other official in charge of a Nazarat.

**461.**

Register of property passing into or through the Nazir's hands otherwise than under orders of the Civil Court. Articles of old furniture, stationery, boxes, etc. which are deposited with the Nazir for sale should be shown in this register. When any such article is sold the proceeds of sale should be credited into the treasury and appropriate entries should be made in columns 4, 5 and 6.

**462. General cash account.**

(1)All sums received in cash and disbursed by the Nazir should be accounted for in detail in this register. Only the daily total of sums for which separate registers are maintained should be entertained. Transactions of each Court in respect of diet-money, returned diet-money and diet-money of Government servants should be shown separately. The pay of officials and of the menial establishment disbursed should be shown in detail.(2)The sums received by transfer from revenue deposits and taken into account in the register of Civil Court Deposit Receipts should be included on the credit side in the daily total of Civil Court Deposit Receipts. On the debit side in

addition to the entry relating to the repayment of the Civil Court deposit a separate entry should be made regarding the deposit of the amount into the treasury by book transfer.(3)Except the permanent advance and sums received for disbursement which can be disbursed within a reasonable time all moneys in the hands of the Nazir shall be credited day by day into the treasury.(4)Except under extraordinary circumstances which should be stated in brief in the remarks column of the classification register the cash balance in the hands of the Nazir at headquarters or the Naib-Nazir at an outlying station shall not exceed Rs. 1000 and Rs. 700 respectively, or such higher sum as may have been sanctioned by the High Court.Note. - A small supply of 10 P. revenue stamps may be kept as part of the cash balance.(5)The daily account shall be examined by the clerk of Court or the deputy clerk of Court, or when there is no clerk of court or deputy clerk of Court, by the officer-in-charge. He shall compare all entries on the receipt side in the cash book with the corresponding entry in the Book of Receipt. Registers of Civil Court Deposits, Processes and Process-fee. Returned Diet-money, etc. The register shall be checked every month by the officer-in-charge who shall personally count the cash balance and record a signed and dated certificate to that effect.

#### **463. Contingent cash account.**

(1)All sums drawn from the treasury on abstract contingent bills, whether in recoupment of the permanent advance or otherwise and all payments made either out of the permanent advance or from sum drawn on abstract contingent bills to meet special charges are to be entered in this register. In no case shall the Nazir make a payment from the permanent advance or from sums drawn on abstract contingent bills without the signature of the District Judge or clerk of Court being affixed to the order for payment. At places where there is no clerk of Court every order for payment should be signed by the officer-in-charge.(2)The contingent cash account shall be checked daily by the officer-in-charge with the vouchers for which payments have been made.

#### **464. Classification register.**

- The object of the register is that the Nazir may be able to state readily the details of his cash balance under all heads of account. As receipts and expenditure under various heads differ in different districts, the headings of this register need not be rigidly adhered to, if experience shows that they can be conveniently modified or extended. The entries shall be examined daily by the clerk of Court or deputy clerk of Court, or where there is no clerk of Court or deputy clerk of Court, by the officer-in-charge. Every month the register shall be put up before the officer-in-charge and his orders should be taken in regard to the disposal of doubtful items.

#### **465. Register of receipts and repayments of returned diet-money.**

(1)(a)Every endeavour should be made to repay returned diet-money speedily and with as little trouble as possible to the party concerned, and with this object in view the Judge should, after ascertaining what witnesses are absent, see that parties present take back the returned diet-money due to them.Note. - A notice in English and Hindi shall be exhibited in every Court to the following effect :-Repayment of returned diet-money-(i)Returned diet-money will be paid to parties at any

hearing of the case at which they are present.(ii)Any returned diet-money not so repaid will be remitted to the parties by money order as soon as possible after the conclusion of the case but money order commission and a charge of 10 P. for stationery and clerical expenses will be deducted from that amount.(b)At the beginning of each working day the Reader should collect all the processes on which diet-money has been returned and should total up the sum repayable thereon. The Judge should then requisition the sum from the Nazir and give him a receipt for it. The Nazir will normally by 11.30 a.m. send the requisitioned sum to the Reader, together with the Register of Receipts of returned diet-money. From the amount received the Reader should pay returned diet-money to the parties concerned in the presence of the Judge and obtain their signatures in column 10 of the register. On each of the processes on which returned diet-money has been repaid the Reader should stamp with a rubber stamp the following endorsement :-"Amount of returned diet-money Rs.....paid to.....in my presence.....Dated.....Signed.....Judge".At 2 p.m. the Reader should send the Register of Receipts of returned diet-money, the processes on which returned diet-money has been repaid, and the balance of unpaid money to the Nazir. The latter after satisfying himself that the entries in the register correspond with the figures on the processes themselves, will return the Judge's receipt and the processes to the Reader, who will file the processes with the connected records. An application for payment of returned diet-money not previously paid may be made by parties at any hearing of a case, and payment should be made in the same manner.Note. - On the last working day of the treasury' or sub-treasury in each mOnth transactions in respect of returned diet-money should be completed by 12 noon.(c)In this way recently all returned diet-money will have been repaid before the conclusion of the case. Such returned diet-money as remains unpaid after the close of the case should be sent, as soon as possible after delivery of judgement, to the party concerned by money order after deducting money order commission and a charge of 10 P. on account of stationery and clerical expenses. The charge of 10 P. should be recovered by means of a court fee stamp to be purchased from the diet-money and affixed by the Nazir on the process form itself. After the delivery of the judgement in the case the Reader should collect all the processes on which returned diet-money has still to be repaid and make the following endorsement on each with a rubber-stamp :-"Amount Rs 'of returned diet-money on this process be returned by money order after deducting necessary charges.Dated.....Signed.....Judge" He should at the same time prepare a money order form for each such amount. The coupon at the foot of the money order form should contain an endorsement showing the number of the case, the name of the Court, the name of the witness and the amount to be sent. The money order form and process should be sent to the Nazir for check. The Nazir should affix the 10 P. court-fee stamp on the process and should then sent the process and the money order form to the Judge for signature. The latter should see that the court-fee stamp is cancelled, sign the order on the process and also the money order form, and return the money order form to the Nazir for despatch to the post office.(d)Occasionally it will happen that the money on the money-order will be returned. Since the Judge signed the money order, the money will be returned to him and not to the Nazir. In such cases the coupon at the foot of the money order should be sent to the Nazir who will make, in red ink below the entries already made in columns 8 and 9 of the Register of Receipts of returned diet-money, an entry to the effect that the amount has been received back. Such an entry might be "Rs. 4 received from the post office, because the addressee is reported to be dead." The Nazir should also note in red ink a fresh serial

entry in columns 1 to 6 against the date on which the money is received back; but in column 2 should be given the old serial number to which the item relates and not a fresh serial number. He should then submit the register to the Judge who will hand over the money to the Nazir after satisfying himself that the necessary entries have been made in the register. No further attempt should be made to return this money by money-order. It will remain in deposit until it lapses in the ordinary way. In a few cases, where the money is returned from the post office it may happen that the party may subsequently appear and claim his deposit. He can then be paid only what has been received back from the post office.

**Note 1.** - In cases where the returned diet-money sent by money-order is not received back or acknowledged by the addressee, the Nazir should enquire from the post office, within two weeks if the addressee resides at a place where there is a post office and within four weeks if the addressee resides elsewhere, what has become of the money order.

**Note 2.** - At headquarters the duties of the Judge with respect to repayment of returned diet-money may be performed by the clerk of Court.

(e) At stations where there is no separate civil Nazarat, returned diet-money should be returned by money order after the conclusion of the case, the procedure to be followed being so far as possible that described above the exception being that after the Nazir has affixed the court-fee stamp to the-process he will prepare the money order form and put it up to the Judge in charge of the Nazarat for signature. The latter will have the court-fee stamp cancelled, sign the money order form for issue by the Nazir and have the process returned by the Nazir to-the Court concerned with the Nazir's report that the returned diet-money has been sent by money order.

(2)(a) The Nazir should keep separate registers for each Court. Every item of returned diet-money which he receives from a Court or a process-server or from the post office on refusal of a money order by the payee should be entered by him on the day of receipt in the Register of Receipts of returned diet-money. The money should remain in the custody of the Nazir to be used by him for making repayments of these items. Below the daily total progressive total should also be given from day to day till the end of the month.

(b) Repayments should be noted in the Register of Repayments as they are made. Below the daily total a progressive total should also be given from day to day till the end of the month. The signature of the person to whom repayment is made should be taken in column 10 of the Register of Receipts against the item repaid. When diet-money is returned by money order to a Court in another station or to the depositor, the post office receipt for the money order should be pasted across columns 10 to 12 of the Register of the Receipt against the item concerned, leaving room vertically for necessary entries if the money order does not reach the depositor. The corresponding receipt received through the post office from the Court or depositor to whom the money was sent shall be filed separately.

(3) On the last working day of the month, the Nazir Shall close the registers for the month of totalling column 7 of the Register of Receipts and column 1 of the Register of Repayments, and shall submit to the Judge a memorandum showing the balance in hand; he shall at the same time remit the balance in hand to the treasury to be included in the cash balance of the district. He shall also record in the Register of Receipts and submit to the Judge, (a) a plus and minus memorandum; and (b) a balance sheet in the sub-joined forms. The Judge shall satisfy himself as to the correctness of the entries made therein by the Nazir and sign them :-Plus and Minus Memorandum

Opening Balance	Receipt during the month	Total Repayment	Closing balance
(1)	(2)	(3)	(4)
			(5)

## Balance Sheet

Year of Receipt	Opening balance	Receipts	Total	Repayments	Closing balance
(1)	(2)	(3)	(4)	(5)	(6)

Third preceding year.....Second preceding year.....First preceding

year.....Current year. ....(4)The plus and minus memorandum prescribed by sub-rule (3) relating to the registers of all the Courts at headquarters should be entered in the Register of Receipts of the Court of the District Judge and those of Courts at outstation in the Register of the Court of the senior Judges. Immediately before the plus and minus memorandum and the balance sheet are signed by the Judge, the clerk of Court or deputy clerk of Court at headquarters and the senior Judge at an outlying station shall check a few entries in the process-server's work-tickets, the General Cash Account and the Classification Register and file of money order receipt. The remittance lists should also be referred to whenever returned diet-money has been withdrawn from or paid into the treasury since the date of the last preceding check.(5)If at any time during the month the sum in the hands of the Nazir on account of returned diet-money is in excess of Rs. 100 or such smaller sum as may be fixed with the sanction of the High Court, the excess shall at once be remitted to the treasury. If necessary, the amounts thus remitted, or any portion thereof, may be re-drawn from the treasury by the Nazir on the remittance list.(6)Whenever any amount is remitted to or drawn from the treasury during the month under sub-rule (5), the transactions shall be included in the plus and minus memorandum which will then be drawn up in the following Form :- (a)Total receipts of the month as per Register of Receipts.(b)Deduct amount already remitted to treasury as per treasury officer's receipt.(c)Net amount now to be credited in treasury accounts.(d)Total payment of the month as per Register of Repayments.(e)Deduct amount already drawn from the treasury.(f)Net amount now to be debited in treasury accounts.(g)Balance, being difference between (c) and (f) now to be remitted to or received from the treasury.The gross figures, that is, the amount shown against (a) and (d) only should be entered in the Registers of Civil Court Deposit Receipts and Repayments, respectively under clause (7) but the monthly totals of the receipts and payments on account of Civil Courts Deposits, including the petty items of returned diet-money, as recorded in the treasury, should agree with the totals of the deposit register, because the amounts shown in the above memorandum against (b) and (e) will already have been included in the treasury accounts, and these added to (c) and (f) should make up the figures shown against (a) and (d).(7)The total receipts and payments of the months as shown by the plus and minus memorandum should be entered in the Registers of Civil Courts Deposits Receipts and Repayments respectively, as a single item to be described as "Petty items of Returned Diet-money" without giving a number to the item or recording any other particulars.(8)In the Extract Registers of Receipts and Repayments of Deposits prepared for submission to the Accountant-General; the monthly totals only should be entered at the foot as the amount of petty items of the returned diet-money received from and paid to the Nazir. A note, however, should be made against the total repayments showing the amount repaid out of deposits received each financial year and the Judge should see that these amounts agree with those in the balance sheet recorded in the Register of Receipts. Thus, if the total amount of petty items of returned diet-money repaid during the month were Rs. 75 a note would be made against this total :

Rs.

From receipts of 1959-60 10

From receipts of 1960-61 22

From receipts of 1960-61 43

Total: 75

(9) On the 31st March all items lapsing to Government, under Rule 562, Madhya Pradesh Treasury Code, Volume I, shall be entered in column 11 or column 12 of the Register of Receipts and the total thereof included in one sum in the list of lapsed deposits to be submitted to the Accountant-General in accordance with that rule. This list should show distinctly how much is to be credited to Government as lapsed out of the amounts received during each financial year. Thus, if Rs. 63 are to be credited to Government as lapsed, a note should be made :-

Rs.

From receipts of 1957-58 10

From receipts of 1958-59 23

From receipts of 1959-60 30

Total: 63

Before submission of the list to the Accountant General the registers should be examined by the Judge, who should satisfy himself that all items lapsing under the rule are included in the list as above. Refunds of amounts included in this list will be payable only with the sanction of the Accountant-General under Rule 564, Madhya Pradesh Treasury Code, Volume I. (10) In order to maintain a proper check over the disposal of items of returned diet-money the Judge should himself trace not less frequently than once a quarter, a certain percentage of items from the process-servers work-tickets, into the Nazir's Register of Receipts of returned diet-money and should see that the instructions contained in these rules are duly carried out.

#### **466. Register of Civil Court deposit receipts and register of repayments of Civil Court deposits.**

(1) Only one set of these registers should be maintained for all Courts at each station. The deposits of the different Courts at the station should be distinguished by an initial letter A, B, C etc. to be allotted to each Court and this distinguished letter should be written below the serial number of the deposit in column 2 of the Register of Civil Court Deposit Receipts. Note 1. - If possible the names of payees should be given in column 4 of the Register of the Civil Court Deposit Receipts. Where the entry is non-committal it should be stated that the amount is payable under order of the Court. Note 2. - It is the duty of the Nazir to trace the history of each deposit and to verify the correctness of claim to repayment. He is responsible for the accuracy of his registers, reports to Courts and accounts to the Accountant-General. (2) When an application for leave to deposit money is received the Court will pass an order that the sum be accepted as a deposit. The reader or the clerk concerned should thereupon endorse on the application an order to the Nazir to receive the money. The application should then be given to the applicant to be presented with the money to the Nazir. The Nazir will receive the money, take it into his account and endorse a report of having done on the application which will be immediately returned through his peon to the Court. (3) (a) When the Nazir

receives money from the head copyist he shall enter the total amount as a single item in the Register of Deposit Receipts, describing it as "Copying fee received from the head copyist", without giving a number to the item or recording any other particulars. In case of emergency the Nazir may receive court-fee stamps as the equivalent of cash to be kept as part of his cash balance. The court-fee stamps should be returned to the head copyist at the first opportunity.(b)In case of withdrawal if the balance in deposit at the credit of the head copyist is sufficient, the Nazir should make the payment and enter the items in the Register of Repayments of Civil Court Deposits without number as "Repayment of copying fees to head copyist".(4)Money realised in one tahsil under a warrant issued by a Civil Court in another tahsil should be sent to the Court concerned by postal money order at the judgement debtor's expense. The server or the sale Amin, as the case may be, shall pay the amount to the Nazir under whom he serves, and the Nazir shall send the money order from his office and endorse the fact of his having done so on the warrant before returning it. On receipts of the money order and the warrant the Court concerned shall cause the money to be taken over by the Nazir and treated as a Civil Court deposit. The money order shall be addressed to the judge of the Court to whom the money to be remitted belongs. The Nazir should invariably note in the coupon of the money order form, the number of the case and a clear description of the warrant in pursuance of which the money was recovered.(5)When an application is made for the repayment of a deposit the Court should call on the Nazir to report on the application whether the sum claimed is in deposit. The Nazir should report the exact terms of the entry in column 4 of the Register of Receipts of Civil Court Deposits. On receipt of the report the reader, execution clerk or other clerk dealing with the deposit, as the case may be, should report to what extent the applicant is entitled to be paid. No application made by a pleader for repayment of a deposit on behalf of his client or principal if not accompanied by a power attorney, will be entertained unless it contained a declaration made by the pleader in writing to the effect that he is empowered to receive the money for his client or principal by virtue of the power filed by him with the original records. Thereupon the Court after satisfying itself as to the merits of the claim of the applicant, will pass an order for payment in favour of the applicant. The clerk whose duty it is to prepare vouchers will then prepare a voucher which will be signed by the Court and given to the applicant for presentation to the Nazir. The Nazir shall satisfy himself that the person attending to receive the money is (a) the person in whose favour the order for payment has been passed, or (b) his pleader or agent duly authorised to receive the same for his client or principal. If the said person is not personally known to the Nazir, he shall be identified by two respectable persons whom the Nazir does know and their names and addresses shall be entered in the remarks column of the Register of Repayments. So far as possible all vouchers should be sent to the Nazir before 1 p.m. The Nazir will daily pay out of his cash balance up to the limit of the sum held by him under the head "Civil Court Deposits". Vouchers for sums in excess of that amount, which he may receive up to 1 p.m. will be paid by him after he has drawn the amount from the treasury. After payment of the Nazir will immediately endorse on the application a certificate of payment and return it to the Court concerned. If arty poundage fee is realised the Nazir shall note the number of the connected warrant of sale in column 4 of the Register of Receipts of Civil Court Deposits.Note 1. - Payment of the amounts of Civil Court Deposit belonging to the estate of Wards under the management of Courts of Wards may be made by transfer credited to the personal deposit account of the estate concerned instead of by cash payment to the employees of the Courts of Wards.Note 2. - Applications for execution usually contain a prayer to realise money and pay it to the decree-holder vide Form No. 6, Appendix E, Civil Procedure Code. The Court is bound to deal

with the prayer to pay out by an order and having passed an order to pay out cannot subsequently insist on an application to pay out. The Court should, however, in such cases, insist on a memorandum and should follow the procedure in the above rule as if memorandum were substituted for application. The essential differences between the two are that a memorandum need not, and an application must, be stamped and a memorandum should not contain a prayer. If the memorandum contain a prayer and thus amounts to an application it must be stamped as an application. (In this respect see paragraph 5 of Appendix V). Note 3. - The practice of obtaining the signatures of identifying witnesses in the remarks column of the Register of Repayments is unobjectionable and is a useful safeguard. Note 4. - (1) Further instructions regarding vouchers-(a) All applications for vouchers must be sent to the Nazir (or Naib-Nazir, as the case may be) on the day of receipt. (b) The applications with the Nazir's (or Naib-Nazir's) report should be submitted to the Judge not later than the next working day. (c) Except when it is necessary to send for a record all vouchers should be issued within three days of the receipt of the application. The Judge shall, by referring to the application for the voucher, check compliance when signing the voucher. (d) When it is necessary to send for a record the Judge shall check that no time has been wasted. (2) A manuscript book, in the following Form shall be maintained by the Court Reader of each Court:-

Date of receipt of application for vouchers	Case number and year with names of parties in brief	Applicant told to appear	Voucher delivered on	Remarks
(1)	(2)	(3)	(4)	(5)

Note to column (1). - Entry in the manuscript book should be made as an application is received. (6) On each working day before the treasury is closed the Nazir should forward to the Treasury a remittance list showing in a lump sum the amount of Civil Court Deposits received and repaid during the day with a remittance in cash or a demand for the excess of repayments over receipts. (7) Sum received and repaid on account of deposits after despatch of the daily remittance list to the treasury should be entered in the Deposit Registers on the day they are received or repaid, and the total of receipts and repayments of the whole day (whether prior or subsequent to treasury hours) should be carried to the General Cash Account and the Classification Register. Care should be taken to add in the Deposit Registers, in red ink, below the date of actual deposit or repayment, the date of credit into or withdrawal from the treasury of each item received or repaid after treasury hours. Note 1. - In order that the monthly totals in the deposit registers may agree with the total of receipts and repayments in the Extract Registers submitted to the Accountant General such items received or repaid after the despatch of the remittance list on the last working day of a month should be entered in the deposit registers appertaining to the next month, and not as the closing entries of the month in which they were actually made. Note 2. - In order to minimise the number of transactions after treasury hours, a notice in Hindi requesting the public to make deposits as far as possible before a certain hour (to be fixed by the District Judge) should be pasted in a prominent place at each Court-house. (8) When a Court orders under Order XXI, Rule 86, Civil Procedure Code, the forfeiture of a deposit of 25 per cent of the purchase money in an auction sale minus the expenses of the sale the execution clerk should immediately take steps to withdraw from the Civil Court Deposits on a Civil Court Deposit repayment voucher the amount ordered to be forfeited. The voucher should be sent to the treasury with the remittance list for payment by transfer credit to the



head "Administration of Justice". The Nazir should give details of the withdrawal and credit to Government in his General Cash Account and form it the figures for the Tauzi will be taken.(9)(a)The Nazir should also keep Monthly Extract Registers of Receipts and Repayments in which posting should be made from day to day. The transactions with the treasury should be posted both in the Deposit Registers and the Extract Registers up to the end of the month and those with sub-treasuries upto the 27th (except in March, when the transaction should be posted up to the last day). Transactions with sub-treasuries subsequent to the 27th should be recorded under the proper date in the registers appertaining to the next month. The totals for the month should be struck both in the Registers of Receipts and Repayments and in the Extract Registers and the total of each register should agree with that of the corresponding Extract Register.(b)Deposits and repayments of copying fees to the head copyist should not be reproduced in detail in the Extract Register; only the monthly totals should be entered at foot as the amount of the copying fees received from and repaid to the head copyist but the total amount repaid from the deposits made in each financial year should be shown separately.(10)The extract Registers of Receipts and Repayments together with the Repayment Vouchers, should be sent to the Accountant General through the officer-in-charge of the treasury, who will certify to the agreement of the total receipts and repayments with the treasury figures before forwarding the registers to the Accountant General. The Treasury Officer will also certify the agreement of the balance shown at the foot of the Extract Register of Personal Deposits with that shown in the Nazir's Extract Register of Civil Court Deposit Receipts. If there be any discrepancy, the Registers should be returned by the Treasury Officer for correction. In order to secure the above agreement it is necessary that all entries of Civil Court Deposits should bear the date on which the money is paid into or drawn from the treasury or sub-treasury. This can be easily arranged in personal communication with the treasury.

#### **467. Dak book for process sent by post.**

- Only processes sent by post shall be entered in this book. In column 6 (postage) the value of stamps used shall be noted against each cover and in the last three columns (Nos. 7 to 9) the daily total only shall be entered. At the close of each day's entries details of the closing balance shall be given as under :-

Number

Five paise   Ten paise   Fifteen Paise   And so on

(1)                (2)                (3)                (4)

Sums required for the purchase of stamps should be drawn on Contract Contingent Bills. The amount spent on postage for transmitting process forms a portion of the cost of process-serving establishment and it can be ascertained from this book only.

#### **468. Register of checking of process-server's work by sale Amins.**

- This register should be scrutinized by the officer-in-charge every month. It should be seen that the checking is thorough and scrupulous. The Nazir should select processes to be checked by the sale

amin and should see that all processes which involve any suspicion of dishonesty careless work by the process-server are included. He should also bring to the notice of the officer-in-charge all cases in which the process-server appears to be at fault.

#### **469. Register showing the work done by sale amins.**

(1) In order to facilitate the distribution of work among sale amins and to prevent delay owing to several Courts fixing the same date for sales, the Nazir should keep a list of the Nazir's engagements and the following system should be adopted:- All orders for sales to be held by the sale amins should be sent as soon as passed to the Nazir, who should, with reference to his list of the amin's engagements, arrange suitable dates for the sales so as to enable the amin to dispose of them punctually and without unnecessary travelling. The Nazir should then report to the Courts the dates on which the sales ordered by them can be held, and the Courts should then issue the necessary orders and the proclamation. (2) Each sale amin shall submit monthly to the Judge a report of his work in the prescribed form. In the column for remarks he will briefly explain the circumstances which prevented him from holding a sale on the date fixed therefor (column 4) or his reasons for not holding the sale to which the entries in column 8 relate. The reports of amins at outlying places shall be submitted quarterly by the officer-in-charge to the District Judge has passed orders on them, they shall be returned to the Courts concerned where they shall be filed in a compilation which shall be paged and bound so as to admit of subsequent reports being inserted. The reports of the same amin at the headquarters of a district shall similarly be filed in a compilation in the office of the District Judges. (3) Forms of work-tickets prescribed for process-servers may be used for sale amins. When any warrants of sale are entrusted to a sale amin they should be entered in the work-ticket by the Nazir, and unless the sale amin has duly accounted for all the warrants and the moneys realised by him, fresh warrants should not be entrusted to him for execution. Note. - The Nazir should carefully see that on his return the sale amin properly renders accounts and pays in all the moneys realised by him before fresh warrants of sales are entrusted to him. (4) When the sums realised under a warrant or warrants exceed Rs. 300 the sale amin shall, as early as possible, but without adjourning the other sales to be held by him, either return to headquarters and deposit the amount with the Nazir or the Naib-Nazir, as the case may be, or remit it to the Court by money-order from a post office at the expense of the judgement-debtor or judgement-debtors. (5) The sale amin should submit his quarterly programme of sales to the District Judge for approval through the officer-in-charge three months prior to the quarter to which the programme relates. Note. - It is the duty of the District Judge and the officer-in-charge to see that the sale amin is kept fully employed.

#### **470. Book of receipts for money.**

- All sums paid into or deposited in Courts, which the reader and other clerks of the Court' are prohibited from receiving, shall be received by the Nazir. As soon as any amount is paid tire Nazir shall enter it on a form of the book of receipts. The receipt shall be prepared in duplicate by means of a carbon paper, the original being tom off at the perforated line and handed over to the payer as his receipt.

## **471. Register of security deposits.**

- This register should contain the list of officials from whose pay deductions are made under Rule 451. Appropriate entries should be made when deductions are made and when they are deposited in the post office savings banks. The register should be scrutinized by the officer-in-charge every month.

## **Chapter XXIII**

### **Copies and copying section**

#### **1. Presentation of Applications and Payment of Charges**

#### **472.**

(1) Applications for copies may be presented in person or by an agent or pleader to—(a) The head copyist of the office where the record from which copies are applied for is required to be deposited for safe custody; (b) The Senior Judge at a station where there is no record-room but where records are temporarily kept; (c) The Presiding Judge of a Court if the record is in his Court and if there are facilities for granting copies to parties; (d) Any official of the Court, not being a copyist, authorised by the District Judge to perform the duties of a head copyist. (2) The head copyist mentioned in clause (a) above can also entertain applications for copies sent by post.

#### **473.**

(a) A party to a Judicial proceeding may at any stage of the proceeding obtain copies of the record of such proceeding, including exhibits which have been finally accepted by the Court as evidence, subject to sub-rule (b). (b) A party who has been ordered to file a written statement reply or return is not entitled to get a copy of the written-statement, reply or return filed by another party until he has filed his own.

#### **474.**

(a) A stranger to a judicial proceeding may obtain copies of plaint, written statement, memorandum of appeal affidavit, petition or application, filed in the judicial proceeding only after its decision but may for sufficient reasons shown to the satisfaction of the Presiding Judge and on his order in writing, obtain copies of any such documents before the decision. (b) A stranger to a judicial proceeding may obtain copies of judgement, decree or order in the proceeding.

#### **475.**

A stranger to a judicial proceeding cannot obtain copy of an exhibit put in evidence without the written consent of the person by whom it was produced or his successor-in-interest save exceptional

cases where the Presiding Judge, or in his absence of the District Judge is satisfied that the applicant has a personal interest in it.

#### **476.**

(1) Every application for copy or copies shall bear court-fee stamp of 10 Paise as required by Article 1 (a), Schedule II to Court-fees Act, 1870. (2) If an application sent by post is unstamped, the head copyist shall first cause a stamp to be affixed from out of the money received with the application before entertaining it. Note. - A separate application is necessary for each record from which a copy is sought, but copies of any number of documents from one record can be asked for by one application.

#### **477.**

Every application shall be accompanied by an advance sufficient to cover the estimated cost of the copy applied for and the cost of the court-fee stamps, if any, required under Articles 6, 7 and 9 of Schedule I of the Court-fee Act, 1870, as amended from time to time, and also, where the copy applied for requires a non-judicial stamp under the Stamp Act, 1899, by the requisite non-judicial stamp. If a copy of a map is to be prepared on tracing cloth the application shall also be accompanied by the tracing cloth. In the case of an application sent by post, the advance shall be remitted by money order. Note. - Applications received by post without the requisite non-judicial stamp or the tracing cloth should be registered in the Register of Applications for copies but in such cases copying may be considered to have been stopped for want of funds so far as it concerns the copies of those particular documents, and the applicant should be asked to supply the requisite stamp or the tracing cloth.

#### **478.**

(1) If a party requires delivery of a copy more expeditiously than would in the normal course of business occur, he may, in addition to the application for copies presented in the manner prescribed to Rule 477, file a separate application stamped under Article 1 (b), Schedule II, Court-fees Act, 1870 (VII of 1870), praying for early delivery of the copies and stating the grounds on which such prayer is made. If such an application is received by post without requisite stamps, the head copyist shall cause the deficient stamps to be affixed and cancelled and debit the costs to the applicant's account. But if the account does not permit the deficiency of stamps to be made good in this manner, the application shall stand rejected. The application for early delivery will be immediately forwarded to the officer-in-charge of the copying section who shall deal with it forthwith and may, after taking into consideration the facts alleged in the application for early delivery and the state of business in the copying section, allow the application and return it to the head copyist. The charge for copies, in respect of which such an application has been allowed will be double the ordinary rate and the advance deposited with the application for copies should be worked out at double the ordinary rate. If the application is rejected the copies will be prepared in the ordinary way, the usual copying fee being charged, and the excess will be refundable. If the application for early delivery is granted, the copies applied for will be prepared as expeditiously as possible getting preference over ordinary

applications for copies and ordinarily should be made ready for delivery not later than two days after the order for early delivery is passed. The word "express delivery" shall be noted in red ink at the top of the first page of the copies and in the remarks column of the register of applications. Unless expressly ordered the extra costs for obtaining such an express copy shall not be taken into account in taxing the costs of any proceedings.(2)An application received by post before the arrival of the connected advance shall not be registered or acted upon until receipt of the advance. Should an advance be received before the connected application, the money shall forthwith be sent by the head copyist to the Nazir who will hold it under head "Miscellaneous". This transaction shall appear as an item in Pass Book B. On receipt of the connected application the Head Copyist shall send the pass book and obtain the money from the Nazir. If no application is received within thirty days, the Head Copyist shall demand returns of the money and proceed under Rule 499.

#### **479.**

Every application for a copy shall state-(a)whether the copy is to be sent by post or whether the applicant, or his agent, or a legal practitioner will take delivery in person; and(b)the applicant's full postal address.Copying shall not be refused for failure to keep this rule but the consequences of the failure will rest solely on the applicant.

#### **480.**

On each application the Head Copyist or the officer-in-charge shall endorse the date of its receipt and shall initial the endorsement. If the applicant is present in person, the Head Copyist shall immediately give a receipt in the prescribed Form (No. 11-68) for the advance received with the application.

#### **481.**

[(1) The fee for preparing copies shall be one rupee per page or fraction thereof, whether in English, Hindi or any other language. Copies required by officers of the Central or State Government for Government purposes, but not for conducting a case in a Court of law, shall be made on plain paper free of cost :Provided that in case where a copy is prepared by photocopy machine then the charges shall be two rupees per page.] [Substituted by Notification No. C-2493-III-1-5-57-CH-20, dated 23-5-1995.](2)Copies of any part of the record of a case to which the Central or State Government is a party when required for purposes connected with the conduct of a case shall be supplied on payment of requisite fee.(3)Copying fees received in cash by the Head Copyist or other authorised person should be utilised for purchasing court-fee stamps, court-fee stamps of a value equal to the copying fee for each sheet should be affixed to every sheet of certified copy.

#### **482.**

Copies of documents such as maps, registers and statements may have to be prepared on paper other than the ordinary copy sheets. The Head Copyist shall take such advance as he considers

necessary for the preparation of the copies, but the clerk of Court or the officer-in-charge shall decide how much is to be charged after examining the completed copy. The Head Copyist shall affix court-fee stamps to the copies so prepared, the value of the stamps being equal to the amount of the copying fee so decided.

## **2. Preparation and Delivery of Copies**

### **483.**

Records required for copying which are in the record-room shall be obtained by sending the applications for copies in original to the record-keeper, the number and the date of each application being noted in the dak book maintained in the copying section. All such applications received during each day shall be sent to the record room by 4.30 p.m. the same day. The record-keeper shall trace the records from the information in the applications and return the letter with the connected records as early as possible. No application shall be retained by the record-keeper for more than three days including the day of receipt by him if the record required in connection with an application is not in the record room or cannot be traced because the information in the application is wrong or insufficient, application shall be returned with an endorsement "Description Wrong", "Record cannot be traced", as the case may be. Note. - The clerk of Court shall see that records are not called for or retained by the copying section for purposes foreign to copying and that the head copyist obtains in his dak book an acknowledgment of the receipt of each record returned to the record room or to a Court or official.

### **484.**

Applications for copies of pending records or parts thereof shall, on being received and registered, be sent to the Presiding Judge of the Court concerned for his orders as to whether a copy should be granted. In case of refusal by the Presiding Judge to grant a copy the head copyist shall inform the applicant accordingly and refund the advance. In the case of applications received by post, the information should be sent by post and the advance refunded by money order after deducting therefrom the necessary money order commission.

### **485.**

If the required record is in the High Court or in the Court of a District Judge the connected application shall be placed before the District Judge concerned for orders.

### **486.**

When a copy applied for is of a document on a printed form (e.g., a decree), it shall ordinarily be copies on the appropriate printed form, printed matter on the form being treated as a matter copied. All copies not so made shall be prepared on sheets of plain water-marked paper, viz., foolscap 13.5" x 8.5", which shall be obtained from the treasury or subtreasury. Both sides of the paper should be

used whether the copying be in manuscript or in type. One sheet should ordinarily contain 720 words in type (i.e., 30 lines at an average of 12 words a line on each page or 240 words in manuscript. At the top of the sheet on both sides a margin of 1.5 inches should be left for the fixing of the necessary court fee stamps. There should also be a margin of one inch on the left of the front of the sheet and on the right of the back of the sheet. A margin of quarter inch should be left on the right of the front of the sheet and on the left of the back of the sheet. Similarly there will be a margin of quarter inch on both sides at the foot of the paper. It should not be necessary to rule these margins, but, if they are to be ruled, the ruling should be in pencil. For typewritten copies usual double-line spacing should be used. For manuscript copies in English the spacing should be 20 lines on each page and 6 words to a line and for manuscript copies in other languages it should be 15 lines on a page and 8 words to a line. The exact number of words in a particular line is, however, immaterial so long as the total per sheet approximates, sufficiently, close, to the standard required for each sheet, four figures counting as one word- Tire value of the court-fee stamps to be attached to the sheet depends on the total number of words written or typed. Note - Documents written Modi should be copied in devanagri character.

#### 487.

Immediately below the top margin shall be written or typed the words "copy of with a description of the document to be copied. On the back of each sheet in the top margin the stamp "Head Copyist, District and Sessions, Judge's Office", or the seal of the Judge shall be affixed.

#### 488.

At the beginning of each copy shall be given a brief description of the documents to be copied, e.g., judgement, decree, order, deposition of plaintiff's or defendant's witnesses No....., plaint, written statement, application, exhibit, etc. The description must give a reference to the case sufficient for identification, including the number and year of the case, the name of the Court to which the case belongs, the names of the parties, the claim and the date of decision. When the copy is a copy of a document in an appellate record or a miscellaneous case connected with a civil suit, the description of the appellate or miscellaneous case, as the case may be, as well as that of the civil suit shall be given. Similarly, when a copy is made from the record of an execution case the description of the original case should be added to the description (without number) of the execution case.

#### 489.

On the back of the last sheet of each copy shall be typed or otherwise endorsed the following table:-

Application Received on	Applicant told to appear on	Applicant appeared on	Application (with or without further or correct particulars) sent to Record Room on	Application received from Record Room (with record or without record for further or correct particulars) on
1	2	3	4	5

Applicant given notice for further or correct particulars on	Applicant given notice for further funds on	Notice in column 6 or 7 complied with on	Copy read on	Copy delivered or sent on	Court-fee realised
6	7	8	9	10	11

Copyist..... Comparer.....| Head copyist or Authorised official

The dates to be entered in the Table shall be expressed in figures not in words and all corrections shall be properly attested. When certifying copy the Head Copyist or authorised official or the Judge shall satisfy himself that the entries in the table have been correctly made.

#### 490.

If the copy is of a kind requiring a stamp under Article 24, Schedule I of the Stamp Act, 1899, it shall be commenced on an impressed non-judicial stamp paper of the value required and shall if not furnished on the front side thereof, be completed on an ordinary plaint sheet or sheets. If the copy is finished on the non-judicial stamp itself the endorsement required by the preceding rule shall be made at the back of the stamp. The requisite court-fee stamp to cover the cost of the writing thereon shall be affixed to the non-judicial stamp and also to each plain sheet.

#### 491.

(1) Under no circumstances shall a copy be carried beyond the number of sheet for which charges of copying have been deposited. (2) When an application is made by post and it is discovered that copying cannot be taken in hand for want of funds or correct information, a notice shall be posted to the applicant on the day the defect is discovered, with a direction to send the money or the information. (3) When the defect mentioned in sub-rule (2) is discovered in an application presented in person, the applicant shall be informed verbally at once if it is discovered on presentation, and if after presentation, then on the next day fixed for him to appear or at any time before such date, if he is available. If he does not appear on the day fixed or is not informed at any time before such date, notice shall be posted to him that day to the address, if any, given under Rule 479. (4) If for a period of 30 days an advance received by money order cannot be spent because there is no application, or an application sent by post cannot be acted upon because there is no advance, the head copyist shall so inform both the clerk of Court and the applicant either personally when he attends or by post if he applied for a postal copy. (5) When the applicant is given oral information under this rule it shall be recorded as in the case of notice issued to the applicant. Note. - District Judges should, having regard to the necessity for safe custody of records and the accommodation available for such custody in the copying branch; pass general orders as to the custody of records of which copies are stopped for want of funds or correct information.



**492.**

When copies are ready they shall before delivery or despatch, be signed by way of attestation by the head copyist or Judge, who shall before signing, see that each sheet bears the court-fee stamps to cover the cost of copying and that all such stamps have been punched by a punch marking the letter C. The attesting officer shall also see that court-fee stamp, if any, required by Articles 6, 7 and 9 of Schedule II of the Court Fees Act, 1870, have been affixed to the first page of the copy and punched with a C punch. Note. - A postal copy (i.e., a copy which is to be sent by post) in which copying work is finished but which cannot be despatched for want of postal charges only should be created as ready and the date on which it is so treated should be entered in column 7 of table of dates prescribed in Rule 489 foregoing and also in column 12 of the Register of Applications for copies. The same date should also be put in column 5 of the Table and column 8 of the Register of Applications for copies with an addition of the word "Postage" below the date.

**493.**

Copies shall be delivered to applicants personally or to their agents or pleaders or sent by post, if so desired, to their addresses by registered packets or by registered letter or parcel when postage stamps are enclosed.

**494.**

If the amount of the advance in an application in which the copy is to be sent by post is more than sufficient to cover all charges (including court-fees, postage and registration fees), the surplus shall be remitted by money order, or if it does not exceed forty-five Paise, in; postage stamps enclosed with the copy or in a separate cover as may be economical. In cases where the surplus amount sent by money order is not received back or acknowledged by the addressee, the head copyist should enquire from the post office, within two weeks if the addressee resides in a place where there is a post office and within four weeks, if he resides elsewhere.

**495.**

When an application for a copy of a will deposited with the District Registrar is received, the District Judge shall send a requisition to the District Registrar calling for the production of the sealed cover containing the will. The cover shall be opened as soon as it is received by the District Judge, or in his absence by the officer-in-charge of the District Judge's Office, and the will shall be made over by him to the clerk of Court or deputy clerk of Court under whose supervision the copy shall be prepared. The will shall then be returned by the District Judge or, in his absence by the officer-in-charge to the District Registrar in a sealed cover through the dak book. During the time the copy of the will is under preparation, the will shall be kept in the box provided for the custody of forged documents in the record room.

### 3. Copying Registers and Accounts

#### 496.

The head copyist shall maintain the following registers and they shall be preserved for the period specified below, the period being counted from the date of the last serial entry therein :-

Name of register	No. of form with the No. of schedule on which it is borne	Period for which to be preserved
(1)	(2)	(3)
1.	Register of Applications for Copies	II-65
2.	Account Book	II-66
3.	Detailed Account Book	II-67
4.	Duplicate Receipt Book	II-68
5.	Pass Book A and B showing transactions with the Nazir	II-69
6.	List of unexpended advances	II-70
7.	Dak Book	II-34
8.	Counter-foil of postal money orders	

6 years

3 years

3 years from the date of the last serial receipt.

#### 497.

All applications, whether received by post or presented in person or by an agent or a pleader shall be entered in one and same annual series of numbers in the Register of Applications for copies, the letter P, being written in red ink to the left of the number assigned to each postal application. Note. - Applications for copies in which copies have been delivered or in which advances have been refunded without preparing copies on which are received by post unaccompanied by advance and for which no advance is subsequently received should be preserved for six months from the date of delivery or refund. All other applications shall be preserved for three years from the date of their receipt.

#### 498.

The amount received from applicants personally or by money order accompanied by an application shall be entered by the head copyist in the Register of Applications for copies and in the Detailed Account Book. Daily totals of columns 3 to 7 of the detailed Account Book shall be carried to the appropriate columns of the Account Book.

#### 499.

When a copy remains undelivered or when no work has been done on an application for 30 days for

want of funds or correct information or when no application has been received for 30 days in connection with an amount received by money order the unexpended advance shall be entered in columns 1, 2 and 3 of the List of Unexpended Advances; the application itself and any sheets used in connection therewith shall be deposited in the record room. If the applicant subsequently pays a further advance or supplies correct information the copying shall be resumed and the application shown as restored, in the remarks column against its original serial number in the head copyist's Register of Application for copies : Provided that when the delay, counted from the day on which copying was stopped to the day on which the further advance or information is received, exceeds four months, copying shall be resumed only if the officer-in-charge of the section excuses the delay. The disposal of the unexpended advance either by repayment or by lapse to Government will be shown in red ink in columns 4, 5 and 6 against the original entry in addition to the usual black ink entry in chronological order in columns 1, 2 and 5 which alone will effect the balance in column 7. Note. - Copies undelivered should be preserved for three years from the date on which they first remained undelivered.

## **500.**

If a money order for the balance due to an applicant is returned unpaid the amount thus received shall be entered in column 14 of the Register of Applications, and in column 4 of the Detailed Account Book, and it shall also be entered in the list of Unexpended Advances in the manner described in Rule 499 foregoing. Copies sent by post and received back shall be deposited in the record room.

## **501.**

(1) The head copyist shall ordinarily indent for plain sheets from the treasury or sub-treasury once a month. To minimize work in the treasury the indent should be for a whole number of reams of 480 sheets. This number should not be larger than is necessary to ensure that the stock in hand will never be less than will suffice for a month. The indent should be in duplicate on unofficial memorandum forms. One copy will ultimately remain in the treasury office and one with the head copyist. The indent should be countersigned by the clerk of Court or a gazetted officer. (2) The head copyist shall every day give to each copyist as many blank sheets as will approximately suffice for the day's work and see that each evening each copyist returns to him the number given, whether used, unused or spoilt and the notes of these transactions shall be kept in a rough note book. Note. - The head copyist is responsible for the correct balance of blank sheets. He should be provided with a box and a good lock for the custody of blank sheets. (3) The head copyist shall indent for court-fee stamps, whenever required, from the treasury or sub-treasury. The indents shall invariably be for whole sheets, whatever be the denomination of the stamps. The stamps required may be ten paise, twenty paise, forty paise, eighty paise and one rupee. The head copyist shall not obtain stamps from a stamp-vendor without the express permission of the Judge or gazetted officer-in-charge of the copying section. Note. - The head copyist should make every effort to reduce the number of indents upon the treasury, the indents should, therefore, be as large as possible. (4) The head copyist may include court-fee stamps as part of his cash balance which is sent daily to the Nazir in a sealed leather bag and court-fee stamps shall be reckoned as cash for all account purposes. All transactions

relating to disposal of court-fee stamps should appear in the Detailed Account Book.

**502.**

In the Duplicate Receipt Book shall be entered all sums paid by applicants personally as an advance required for the copy and also all balance returned to applicants personally. As soon as the first advance is received, a receipt with a carbon duplicate shall be prepared. The receipt shall be made over to the payer, and then the copy is delivered, the original receipt shall be taken back and affixed to its carbon duplicate. Receipts from applicants who sent their applications by post, but obtained delivery of copies in person should be taken in a separate receipt book to be maintained for the purpose, entries being confined to such columns as are appropriate. If more money has been advanced than was required the excess shall be refunded to the applicant at the time the copy is delivered.

**503.**

On receiving an application presented by hand the head copyist shall, unless the application asked for postal delivery [See Rule 479 (a)] forthwith fixed and intimate to the applicant a date within seven working days of the presentation on which he should attend to ascertain whether the copy is ready or whether any further advance is required. Should the copy not be complete on the date so fixed, the applicant shall be directed to attend another date within seven working days of the first, and so on. The successive dates on which the applicant is told to attend shall be entered in the receipt as well as in the carbon duplicate of the Duplicate Receipt Book and in the Register of Applications.

**504.**

When the copying work is in arrears or for any other sufficient reason, the head of the office may, by general or special order, direct that the period between presentation and first attendance or the period between the dates fixed for two consecutive attendances shall consist of a fixed number of days in excess of seven, and shall at the same time determine the period for which the order is to remain in force.

**505.**

The District Judge shall record an order fixing the maximum balance of cash to be kept by the head copyist in his own hand, and the amount so fixed shall not in any case exceed Rs. 200 at head-quarters or Rs. 30 at each outlying place, without the special sanction of the High Court. The head copyist shall send his cash balance in a sealed leather bag duly entered in his dak book to the Nazir daily not later than 4.45 p.m.

## **506.**

Whenever the money and court-fee stamps in the hands of the head copyist at the close of the day's business is greater than the amount fixed under the preceding rule, the excess shall be entered in Pass Book A, and paid over in cash by the head copyist to the Nazir to be deposited in the treasury. Unexpended advances shall be sent to the Nazir immediately applications are deposited in the record room and money orders are returned unpaid. [Also see Rule 466 (g)(b)]

## **507.**

When the head copyist requires repayment of the amount paid to the Nazir under the preceding rule, he shall enter it in the Pass Book which will be presented to the Nazir. The date and amount of each deposit out of which repayment is desired shall be given in columns 4 and 5 of the Pass Book. In every case of withdrawal other than that of an unexpended advance the oldest deposit available shall be drawn upon, to that end against each withdrawal which finally exhausts a deposit and also against the entry relating to the original deposit a remark to that effect should be made in the last column of the Pass Book. An unexpended advance once sent to the Nazir shall not be refunded to the applicant until it has been withdrawn from the Nazir.

## **508.**

The clerk of Court or the Judge shall daily examine all the applications disposed of and affix his initials against each entry relating to them in the remarks column of the Register of Applications for copies after satisfying himself that the Account Book, the Detailed Account Book, Duplicate Receipt Book and other connected registers have been duly filled in. He shall also test the work of the copyist from time to time by selected sheets at random and counting the words in each month compare the head copyist's account for the preceding month with the Pass Book and Nazir's Registers of Civil Court Deposits in order to ascertain (a) whether the Nazir has accounted for each item shown by the Head Nazir as repaid to the head copyist has been accounted for in the latter's Account Book.

## **509.**

The head of the office or a subordinate gazetted officer deputed by him shall examine the several registers of the head copyist in the first week of each month with the object of seeing whether the work of copying is being regularly done, the excess payments properly refunded and the excess over the maximum balance paid to the Nazir in accordance with Rule 356. He shall also satisfy himself by an examination of the Account Book that the balance of sheets will suffice for a period not less than one month. He shall also verify the correctness of the account of plain sheets. The head of the office shall also examine a certain number of applications pending over one month in which copying has been stopped for want of funds or proper information regarding the document to be copied to see if they were rightly deposited in the record room.

**510.**

The head of the office or a subordinate gazetted officer deputed by him shall examine the register of applications for copies at least once a quarter and satisfy himself that the entries relating to the applications shown as disposed of have been properly made and that the closing cash balance inclusive of unused court-fee stamps in the hands of the head copyist which is shown in column 13 of the Account Book is correct. The process for verifying the cash balance is as follows: A list of all advances received in respect of applications other than (i) those deposited in the record room under Rule 499, and (ii) those in which copy has been delivered or the amount advanced has been refunded, shall be prepared from the register of application. To the total of the list shall be added the progressive total or balance in the list of unexpended advances. From the sum thus arrived at shall be deducted (i) the value of court-fee stamps used in respect of applications in the foregoing list of advances received, (ii) the balance with the Nazir, as shown in Pass Book A, and (iii) the cost of court-fee stamps fixed by the head copyist to postal applications under Rule 476. The difference found should tally with the closing balance shown in the Account Book and with that in the head copyists hands.

**511.**

In compiling the Extract Registers of Receipts and repayments of Deposits for submission to the Accountant General the items entered in the Deposit Registers of the Nazir without number shall not be reproduced in detail; the monthly totals only shall be entered at foot as amount of copying fees received from and repaid to head copyist. But the total amount repaid from the deposits made in each financial year shall be given separately. Thus supposing the total amount of copying fee repaid during a month was Rs. 175 the note might stand as follows :-

On account of deposits made in 1960-61	Rs. 023
On account of deposits made in 1961-62	Rs. 034
On account of deposits made in 1962-63	Rs. 118
Total:	Rs. 175

[Also see Rule 466 (9)(b)]

**512.**

Early in March a list of items lapsing to Government shall be prepared, and this list, after being compared by the District Judge or the Judge in charge with the list of Unexpended Advances and the Register of Applications, shall be submitted to the Accountant General immediately after the 31st March, in accordance with S.R. 562 of the M.P. Treasury Code. Volume I. The list will show distinctly how much is now; to be credited to Government as lapsed, out of the amount received during each separate financial year. Thus, supposing Rs. 45 are to be credited to Government as lapsed, the note might stand as follows :

On account of 1960-61 Rs. 6

On account of 1961-62 Rs. 5

On account of 1962-63 Rs. 34

Total: Rs. 45

Refund of accounts included in this list shall only be payable with the sanction of the Accountant General under S.R. 564 of the M.P. Treasury Code, Volume I. Note. - The particulars of amounts submitted to the Accountant General by the Nazir under S.R. 560 of the M.P. Treasury Code, Volume I, should show the particular year on account of which there are balance of copying fees outstanding in the head copyist's register.

#### **4. Copying Section**

##### **513.**

The extent of copying staff at headquarters should be determined after taking into account the seasonal variation in work. The permanent staff should be sufficient to cope with the work during the slack season, additional work in the busy season being managed by the employment of section writers.

##### **514.**

The head copyist shall furnish security in the manner laid down in Rule 450 foregoing for sum to be fixed by the District Judge. The sum to be fixed should not be less than 25 per cent in excess of the maximum cash balance fixed under Rule 505 foregoing. Similarly, the peon in the copying section at headquarters shall furnish personal security for Rs. 50 with two sureties for the same amount.

##### **515.**

The head copyist should see that the work is distributed early enough to enable the copyist to begin their work punctually at 11 a.m. All copyists should, as far as possible, be trained copyist and no new candidate should be allowed to work in the section unless he is a trained copyist.

##### **516.**

All copies should be typewritten as far as possible and for this purpose the number of typewriters should always be sufficient for the number of typists available in the section.

##### **517.**

The standard daily outturn for copyists in typing 28 sheets in English, 23 1/3 sheets in Hindi or other language, writing 16 sheets or comparing 87 sheets of 240 words each. In order to reduce the monotony and increase the outturn it is desirable that all copyists should be given both copying and comparing work everyday. On this basis a pair of copyists should be able to give an average daily

outturn of 34 sheets typed in English or 30 typed sheets in Hindi or other language and compared, or 24 sheets written and compared. For estimating the staff required and for similar calculations, a deduction of 10 per cent may be made from the above figure to allow for absentees on casual leave and inexperienced men in leave vacancies and the average outturn of a copyist may be taken as 15 sheets typed in English or 13½ sheets typed in Hindi or other language and compared, or 11 sheets written and compared.

**518.**

In all applications for an increase of staff, it must be shown that the net income from copying fees is likely to continue to be sufficient to meet the cost of the proposed staff including their pension and leave-charges together with the probable expenditure on section writing. The pension and leave charges are one-fourth of the annual cost of ministerial establishment and one-ninth of that of menials.

**519.**

Section-writers should be employed only in the copying section attached to the office of a District and Sessions Judge. At an out-station where; copying is done one copyist is ordinarily sufficient, the necessity for posting another copyist to such a place should be considered only when the daily average outturn exceeds 11 sheets or, where a typist is posted, it exceeds 15 sheets.

**520.**

When the amount of pending work exceeds that which can be completed by the section in seven working days the employment of section-writers may be regarded as necessary and typists in other sections may be diverted. Note. - In estimating the pending work in sheets the average number of sheets of 240 words used for application, or for each copy to a lower Court, or to a Public Prosecutor in the preceding year will be a useful guide.

**521.**

The maximum remuneration for section-writing is prescribed in Appendix VI, Volume II of the M.P. Financial Code, but this should not be given as a matter of course if competent section writers are available at lower rates. If, however, a writer brings and uses his own typewriter for preparing copies, he may be paid at the maximum rate so as to allow the wear and tear of his machine. Note. - Section-writers should not be allowed to do any of their occupying or comparing work out of the ordinary court hours (11 a.m. to 5 pm.).

**522.**

A report on the working of the section during the previous year with statistics in the following form should be submitted to the High Court by the 20th January each year. Copies of a judgement and a



decree sent to a lower Court and copies of commitment proceedings in one case prepared for the public prosecutor should be counted as one copy for the purpose of columns 4 and 5, respectively, of the statement. The figure for column 16 (number of copyists required) is obtained by dividing the figure in columns 14 and 15 and that in column 15 by 10.5 and adding the two results. The work done by the stenographer in preparing copies of judgements and orders for lower Courts should be considered as work done in the copying section and should be shown in all relevant columns of the statements i.e., 4, 7, 9, 19 and 20. In column 21 should be shown the average number of days intervening between the date of presentation of an application for copy and the date on which the copy was ready for delivery, excluding the period during which copying had to be stopped for want of funds or of correct information. Statement showing the work done in the copying sections of the Civil District.....during the year.....

Number of copies prepared for		Number of sheets prepared in copies for									
Name of Station		Total number of working days	Parties	Lower Courts	Public Prosecutor	Parties	Lower Courts	Public Prosecutor			
(1)		(2)	(3)	(4)	(5)	(6)	(7)	(8)			
Name of sheets prepared		Average number of sheets prepared in a workingday									
English Typed	Hindi or other language typed	English written	Hindi or other language written	Total	Typed	Written	Number of copyist required number				
(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)				
Existing staff	Average No. of sheets typed or compared by thestenographer in the copying section per working day		Expenditure on								
Head Copyist	Copyist	Typed	Compared	Average number of days taken to prepare copiesfor parties	Receipts	Permanent Staff	Sectioners	Remarks			
(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)			

## Part VI – Chapter XXIV

### Legal Practitioner fees

#### **523. [ [Substituted by Notification No. A/1866-1-14-1-38-IV-A, dated 25-3-1996, Published in M.P. Rajpatra, Part I, dated 19-1-1996.]**

In suits and appeals decided on the merits, the fees ordinarily payable shall be calculated according to the following scale :-(i)If the value of the claim does not exceed 5000/-10 per cent subject to minimum of Rs. 100/- (ii)If the value exceeds Rs. 5000/- but does not exceed Rs. 25,000/-on Rs. 5,000/- as above and on the remainder 5 per cent.(iii)If the value exceeds Rs. 25,000/- but does not exceed Rs. 50,000/-on Rs. 25,000/ as above and on the remainder 3 per cent.(iv)If the value exceeds Rs. 50,000/- on Rs. 50,000/- as above and on the remainder 2 per cent subject to a maximum of Rs. 7,500/-Explanation. - For the purposes of this rule, the value of claim on any suit or appeal shall be taken to be the value stated in the plaint or memorandum of appeal except where the value has been in issue in the suit or appeal in which case the value determined by the Court shall be taken to be the value of the claim. In cases in which the subject-matter of the claim does not admit of valuation or the pecuniary value of the right sought to be endorsed cannot be exactly defined, the fee may be calculated according to the valuation under Section 7, Act VII of 1870, for computation of the Court-fees payable or a reasonable fee may be allowed, regard being had to the time occupied by the proceedings in the case and the nature of the question raised].

#### **524.**

In mortgage suits, the fees laid down in Rule 523 shall ordinarily be included in the preliminary decree. The Court may also allow a fee for the conduct of subsequent proceedings if they are of a contentious name, but this fee shall not exceed one-fourth of the amount calculated according to the scale in Rule 523.

#### **525.**

In other suits in which a preliminary decree is passed, the Court may allow the fee either in the preliminary or in the final decree. In cases where it awards the fee in the preliminary decree and the subsequent proceedings are contentious, it may also on its discretion award in the final decree, a fee not exceeding one-fourth of the amount calculated according to the scale in Rule 523.

#### **526.**

In cases which are undefended the fee shall be one-half of the amount calculated according to the scale in Rule 523 [subject to minimum of Rs. 50 in the High Court and subordinate Courts and Rs. 25 in Small Cause Cases.] [Substituted by Notification No. A/1866-1-14-1-38-IV-A, dated 25-3-1996, Published in M.P. Rajpatra, Part I, dated 19-1-1996.]

**527.**

hi cases for review of judgements and remands, the fee shall be one-half of the amount calculated according to the scale in Rule 523 [subject to the minimum of Rs. 50.] [Substituted by Notification No. A/1866-1-14-1-38-IV-A, dated 25-3-1996, Published in M.P. Rajpatra, Part I, dated 19-1-1996.]

**528.**

If several defendants who have a joint or common interest, appear by separate advocates and succeed upon a joint defence or upon separate defence or upon separate defences which are substantially the same, not more than one counsel's fee shall be allowed unless the Court otherwise orders for reasons to be recorded. If only one fee be allowed the Court shall direct to which of the defendants it shall be paid or shall apportion it among the several defendants in such manner as it thinks fit. But if several defendants who have separate interests, set-up separate and distinct defences and succeed thereon a reasonable fee for each of the defendants who appear by a separate advocate may be allowed in respect of his separate interest.

**529.**

If several appellants or respondents appear by separate advocates, the appellate Court shall be guided in allowing separate fees by the principles laid down in the preceding rule.

**530.**

(I) In miscellaneous appeals the fee shall be one-half of the amount calculated according to the scale in Rule 523 [subject to a minimum of Rs. 50.] [Substituted by Notification No. A/1866-1-14-1-38-IV-A, dated 25-3-1996, Published in M.P. Rajpatra, Part I, dated 19-1-1996.](2) In proceedings under Section 18 of the Land Acquisition Act, the fees shall be one-half of the amount calculated according to the scale in Rule 523 on the amount or value of the right in dispute [subject to minimum of Rs. 50 and maximum of Rs. 2,000.] [Substituted by Notification No. A/1866-1-14-1-38-IV-A, dated 25-3-1996, Published in M.P. Rajpatra, Part I, dated 19-1-1996.](3) In other miscellaneous proceedings for the execution of a decree, the fee shall be fixed by the Court with reference to the nature and importance of the proceedings, but shall not exceed one-fourth of the amount calculated according to the scale in Rule 523.

**531.**

In cases of Probate and Letters of Administration, the fee shall be calculated according to the scale in Rule 523 when they are certified by the Court as contested, and according to the scale in Rule 526 when they are not contested.

### 532.

A suitable fee not exceeding one-half of the amount calculated according to the scale in Rule 523 may be allowed by the Court to a junior counsel appearing in the case.

### 533.

No fee awarded shall include a fraction of a rupee, the fees calculated under the above rules being taken, where necessary, to the nearest rupee.

### 534.

Save in the cases hereinafter excepted, no fee to any advocate shall notwithstanding anything contained in the above rules, be allowed on taxation between party or included in any decree or order unless the Deputy Registrar, in the case of the High Court, or the Judge, in the case of a subordinate Court, is satisfied that the fee was paid to the advocate before the delivery of the judgement or the making of order by which costs become payable and unless the party claiming to have the fee allowed shall, before the delivery of the judgement or the making of the order by which costs become payable, file a certificate signed by the advocate, certifying the amount of the fee actually paid by or on behalf of his client to him or to any other advocate in whose place he may have appeared :Provided that in the certificates of fees filed by advocates engaged by the Government in cases in which the Central Government or the State Government is a party or in which Government undertakes the defence, or by a receiver in insolvency proceedings, it is sufficient to certify that a fee has been fixed (not paid) by Government or by the Insolvency Court, as the case may be. Exception 1. - The Advocate-General, Deputy Advocate-General, Government Advocate or Government Pleader when appearing on behalf of the State Government or the Central Government or when appearing for the defendant in cases in which Government undertakes the defence. Exception 2. - Any advocate appointed as Standing Counsel for any Improvement Trust, Municipal Corporation, Municipal Committee, Notified Area Committee, Janapad or similar quasi-Government Authority at a fixed remuneration and under conditions which require him to represent such authority in all legal proceedings without separate fee, when appearing for such authority :Provided that a copy of the resolution of the Trust, Corporation, Committee, Janapada or Authority so appointing him and fixing the remuneration for appearing before the Courts on behalf of the Trusts, Corporation, Committee, Janapada or Authority is filed in Court.

### 535.

The certificate shall, as far as possible, be in the following form:- "In the Court of the.....case No.....of..... between and.....I hereby certify that in the above-named case the following fees were paid to me as my exclusive fee [or as my fee as well as that of.....who was (or was to be) associated with me in the case] on the dates and by the persons specified below and that no portion of such fees has been returned and that no agreement for such return or remission has been made by me or by any one on my behalf [or on behalf of.....who

was (or was to be) associated with me in the case] :-

Date of payment	Amount paid	Name and address of person who actually made the payment	Name of person on whose behalf payment was made	Remarks
(1)	(2)	(3)	(4)	(5)

Dates.....Signature of Advocate

## Chapter XXV

### Legal practitioner's cleric

#### 536.

The expression "recognised clerk" means a clerk employed by a legal practitioner and permitted as such to have access to the Courts in which his employer is authorised to practice and to the offices attached thereto.

#### 537.

Two or more clerks of a legal practitioner may be recognised if the extent of practice necessitates their employment. Special care should be taken to see that this condition is satisfied in the case of practitioners of less than ten years' standing.

#### 538.

The District Judge shall maintain in the following form, a register of all recognised clerks employed in his district :Register of recognised clerks of legal practitioners

Serial No. Name Father's name Residence Date of registration

(1) (2) (3) (4) (5)

Name of legal practitioner under whom employed	Courts in which the legal practitioner is authorised to practice	Date of removal from the register with cause for removal in brief	Remarks
(6)	(7)	(8)	(9)

Note. - The register will be open for inspection on payment of the usual fees prescribed for inspection of Court and other registers.

**539.**

(1) Every application for recognition shall be made by a legal practitioner, by a letter addressed to the District Judge in the following form:—"I beg that (name).....son of.....aged.....resident of .....may be recognised as my clerk. I have made due enquiries with regard to the character and qualifications of the candidate, and certify that in my opinion he is a fit and proper person to be recognised as a legal practitioner's clerk, under the rules made by the High Court of Madhya Pradesh. I also certify that he will be employed bona fide in my service for clerical work". (2) The application shall state the legal practitioner's standing at the Bar, the name or names of the recognised clerks, if any, already in his service, and the educational qualifications of the person proposed to be employed as a recognised clerk.

**540.**

An application for renewal of recognition shall be made by the legal practitioner to the District Judge before the 15th January of each year.

**541.**

A fee of Re. 1 for recognition and an annual fee of Re. 1 for the renewal of recognition shall be payable in respect of each clerk. The fee payable for renewal will be Rs. 2 if the application for renewal is made after the date mentioned in Rule 540. The fee shall be paid in the shape of court-fee stamps affixed to the applications.

**542.**

No person convicted of an offence involving moral turpitude shall be registered as a recognised clerk unless after taking into consideration the age, and antecedents of the person the circumstances in which the offence was committed, the interval since conviction and the conduct of the person during that interval, the District Judge is of the opinion that the conviction should no longer operate as a bar to the registration. No person shall be registered as a recognised clerk unless he is approved by the Bar Association, and unless the District Judge is satisfied that he has had a sufficient elementary education in Hindi and also in English if the legal practitioner employing him is practising in the High Court.

**543.**

No person shall be admitted or continued as a recognised clerk if he is, or acts as, a recognised agent (mukhtyar), either under a special or general power of attorney of any person other than the legal practitioner by whom he is employed.

#### **544.**

The names with necessary particulars of recognised clerks registered in the office of a District Judge shall be intimated to subordinate Court and the District Magistrate. On receipt of the information the Judge, or the senior Judge, as the case may be, at outlying stations shall have the necessary entries made in the register which shall be maintained in the form given in Rule 538.

#### **545.**

No clerk recognised as the clerk of one legal practitioner shall do business in Courts or in offices thereof on behalf of any other legal practitioner unless permitted- in writing to do so by his master on special occasions. Note. - Two legal practitioners cannot be allowed to engage a single clerk. If a legal practitioner cannot employ a separate clerk he should do his own work. But one clerk may be allowed for two closely related legal practitioners, such as father and son or brothers.

#### **546.**

No clerk employed by a legal practitioner shall be allowed access to the High Court or any Court subordinate to it, or to any of the offices attached thereto unless he is a recognised clerk.

#### **547.**

(1) A registered clerk may act in all matters of a routine nature which do not require the personal attendance of legal practitioner such as-(i) to present applications signed by his master for-(a) copies of records, (b) return of documents, (c) issue of process with diet-money, if any, (d) payment of incidental costs, (e) translation and typing of evidence in the High Court. (ii) to inspect records if authorised by his master and sanctioned by Court or other officer empowered to do so; (iii) to file powers of attorney in favour of his master; and (iv) to identify, if required and if in a position to do so, persons making inspection of records or swearing affidavits. (2) Acts which the law requires to be done by a party or his recognised agent, or by the pleader duly appointed on his behalf, such as the presentation of a plaint, or memorandum of appeal shall not be allowed to be done by a recognised clerk. (3) When a recognised clerk received any money from his master's employer he shall give to the employer a receipt for the amount received by him specifying exactly what the money was received for, e.g., writing fees or costs, and if for costs, for what costs, e.g., plaint, process-fee, pleader's fee etc. The details shall be set out separately either in the receipt itself or on a separate piece of paper attached to it. (4) No writing fee exceeding the rate prescribed for the time being for petition writers shall be included in the taxed costs and no such fee shall be taxed unless a certificate signed by the clerk and countersigned by the pleader is filed before the date of decision : Provided that a Judge may in his discretion for reasons to be recorded award more than the rate prescribed for the petition writers.

**548.**

The District Judge, for reasons to be recorded in writing, and after hearing the clerk in his defence, if he so desires, order the removal of any recognised clerk and strike off his name from the register, and on the passing of such order the clerk shall cease to be a recognised clerk. Every such order shall be communicated to all concerned as in Rule 544. Note. - Proceedings taken against clerks under this rule are administrative and not judicial proceedings.

**549.**

No person removed under the preceding rule shall be recommended for registration by any legal practitioner at the same or at any other station unless he has been declared to be eligible for registration under Rule 551.

**550.**

The name of a recognised clerk found on enquiry under Rule 548 using the Court premises for private purpose, such as preparation of documents unconnected with the case in which his master is engaged, may be struck off from the register.

**551.**

The District Judge may at any time revise the order passed by him under Rule 548 and may, for reasons to be recorded in writing, reinstate the person removed or declare him eligible for registration.

**552.**

Whenever, a pleader ceases to employ a recognised clerk he shall notify the fact to the District Judge and shall also briefly state the reason why he has ceased to employ him. On receipt of this information the name of the clerk shall be struck off the register and all concerned shall be informed as in Rule 544.

## **Chapter XXVI**

### **Quasi-judicial and non-judicial duties of the clerk of Court and deputy clerk of Court**

**553.**

The clerk of Court or a deputy clerk of Court may receive complaints, memoranda of appeal or applications and sign or initial amendments made before registration in memoranda of appeal, if he is appointed in this behalf by a formal order in writing specifying Order IV, Rule 1, Order XLI, Rule 1



(1), Order XXI, Rule 10 or Order XLI, Rule 3 (3) of the Code of Civil Procedure as the case may be.

**554.**

If the clerk of Court or a deputy clerk of Court is appointed officer to administer the oath of affidavits made under the Code of Civil Procedure he should perform that duty only in respect of affidavits to be filed in Courts under the control of the District Judge and at such time as may be fixed by the District Judge.

**555.**

It shall also be the duty of the clerk of Court-(a)to send a certified copy of judgement, decree or order disposing of an appeal to the lower Court concerned under his own signature and the seal of the Court;(b)to maintain a General Check Register of all statements and returns due from and to the officer of the District Judge and examine and note on them;(c)to examine once a month the records deposited in the record room with a view to finding out whether they have been properly classified and arranged and whether the court-fee labels have been properly punched and their value correctly noted and to report to the District Judge on it or on any other matters which appear to call for notice;(d)to examine daily the Nazir's General Cash Account and Classification Register;(e)to pass orders of payment on contingent vouchers of usual and petty expenditure upto such amount, not exceeding [Fifty rupees] [Substituted by Notification No. A-2051-III-1-5-57-CH-26, dated 3-3-1997, for rupees 'five'.] as may be fixed in each case by the District Judge;(f)to inspect once a quarter the Nazarat, record room and copying section and to record his inspection notes for the orders of the District Judge;(g)to inspect once a quarter the registers of each Court, at the headquarters and to record his inspection note for the orders of the District Judge; and(h)to check the daily account maintained by the process-writers at the headquarters and at out-stations from time to time.Note 1. - If any Court or office section is inspected by the District Judge in any quarter, the registers of that Court or the office section need not be inspected by the clerk of Court in that quarter.Note 2. - The District Judge may assign to a deputy clerk of Court any of the above duties except the one in clause (e).

**556.**

Nothing herein contained shall in any way derogate from the general responsibility of the clerk of Court for the smooth and efficient working of all sections of the office and for seeing that prompt attention is given to all complaints and inquiries made by the members of the public having business in those sections or in the Courts.

**Part VII – Forms and stationery, annual inspections, etc.**

## Chapter XXVII

### Forms and stationery

#### 557.

In every office an officer should be specifically placed incharge of forms and he will be held generally responsible to the head of the office for the proper custody, account and issue of forms and for the timely submission of indents. An official should also be deputed to keep the register of receipts and issues of blank forms in the prescribed form and look after the forms. Note 1. - At the headquarters the clerk of the Court or the deputy clerk of Court and at the outlying stations, the Presiding Officer of the Court or where there are two or more Courts, the Senior Judge may be kept in-charge of the forms. Note 2. - At the head-quarters, the Librarian-cum-Forms clerk and at the outlying stations, the Naib-Nazir shall deal with the receipt and issue of blank forms, except receipt books, and maintain the register in the prescribed form. Note 3. - Attention of the officers-in-charge of forms and of the officials dealing with the receipt and issue of forms is drawn to the provisions of Rule 36 of the Madhya Pradesh Forms Rules, 1961 and to S.R. 60 of the M.P. Treasury Code, Volume I.

#### 558.

Forms should ordinarily be issued on a fixed day, once a month as may be most convenient. The forms clerk should never issue any forms without a written requisition endorsed by the officer-in-charge who should carefully scrutinise all requisitions and see that they are reasonable and that forms are not asked for indiscriminately. Notes. - It should be noted that new forms can be printed and old ones, except Judicial Forms, altered only with the approval of the State Government. Applications for the introduction or modification of a judicial form should be made to the Registrar, High Court of Madhya Pradesh, Jabalpur.

#### 559.

Indents from District Judges for forms should include the requirements of all Courts subordinate to them and these indents, consolidated according to schedule, should be sent direct to the Government Press at the place shown below:-

Schedule No.	Name of Schedule	Location of the Government Press where the schedule is being handled.
(1)	(2)	(3)
	Account Civil	
	Judicial Criminal	
III	Judicial General	Rajnandgaon
IV	English Official	Indore
XXV	Routine Treasury	Indore
XXVI		Rewa
XXVII		Rajnandgaon
		Gwalior.

**560.**

The dates for the submission of the indents for forms as given below should be strictly adhered to:-

Name of Schedule	No. of Schedule	From outlying stations to the District Judge	By the District & Sessions Judge to the Press
(1)	(2)	(3)	(4)
Accounts	Civil	15th January	15th February
Judicial	Criminal	23rd	23rd
General		November 5th	December 25th
(English) Officer	III	March 15th	April 15th
Routine	IV	October 15th	November 15th
Treasury	XXV	December	January
	XXII		

**561.**

Indenting officers should satisfy themselves before signing an indent that it has been properly prepared, that the quantities indented for are reasonable and that no supplementary indent will be necessary during the year. Note. - Attention of the Indenting and Controlling Officers is drawn to the provisions of Rules 15, 17 and 18 of the Madhya Pradesh Forms Rules, 1971.

**562.**

Indents from District Judges for stationery should include the requirements of all Courts subordinate to them and be sent direct to the Superintendent, Government Stationery and Text Books, Madhya Pradesh, Bhopal by the end of December.

**563.**

Before signing an indent for stationery the indenting officer should satisfy himself that it has been properly compiled and that in the case of each article for which a scale has been prescribed, the scale has not been exceeded and that in the case of other articles the indent actually represents the probable requirements of the year. Note. - Stock balance should be maintained by District Judges at such a level as would suffice to last up to the middle of May succeeding.

**564.**

District Judges should, when inspecting offices subordinate to them inquire carefully into the consumption of stationery and forms and see that strict economy is being observed and that the Stationery and Forms Rules are being properly complied with.

## Chapter XXVII

### Annual inspections

**565.**

(1) Once at least in every year the District Judge shall personally inspect all the Courts and offices at the headquarters of his district. He will examine closely the work of the clerk of Court, deputy clerk of Court, accountant, record-keeper, statistical writer, copying staff, nazir and petition writers. (2) The Courts at outlying stations shall be inspected by the District Judge once a year. If he cannot arrange to inspect any of those Courts himself he should depute an Additional District Judge for the purpose. (3) At each inspection an inspection note shall be recorded. Note 1. - There should be no need for a District Judge to make a long tour for the purpose of inspection. It will often be advantageous to arrange inspections when the Judge is necessarily visiting a place to hold sessions. Note 2. - The annual inspection does not exhaust the District Judges responsibilities in the matter of inspection. Time allotted for sessions and not eventually required can conveniently be used for surprise inspections. It should be remembered that a truer view of the working of a Court can often be obtained from such surprise inspection than from the annual inspection of which ample notice is usually given.

**566.**

The object of inspection is to satisfy the District Judge and through him the High Court that the Courts are functioning properly, that rules are understood and followed and that work is disposed of promptly and regularly. At the same time the inspection officers, the District Judge an opportunity of helping and instructing his Civil Judges and of correcting faults in procedure which would not normally require reference in appellate judgement and full advantage should be taken of this opportunity. While the note should be sufficiently full to indicate that the inspection has been thorough it should be as concise as possible. It is unnecessary to refer to trivial matters which can conveniently be set right by oral instructions. It is also unnecessary to refer to instructions which are being correctly followed. It is enough if matters in which instructions are not followed are pointed out. It is equally unnecessary to include lengthy transcripts of order sheet entries or to indicate at length the progress of a case unless the procedure followed requires correction or comment. It is desirable that criticisms of procedure should be coupled with advice as to be correct procedure. It is also desirable to include a paragraph summarizing the Judge's work and control and giving an estimate of his capabilities as judged from the inspection. Inspection work with its opportunities for helping junior Judge's and for improving the standard of the judicial administration generally, is one of the more important aspects of a District Judge's work and is an aspect to which he should devote considerable attention. Unhelpful and routine notes are to be too strongly deprecated.

**567.**

The inspection of a Court shall extend to the office and establishment of the Judge whose Court is inspected and cover the state of the building or the court-room and of the office furniture, the conditions of the library and of the stock of forms and stationery the working of the rules relating to the petition-writers the efficiency of the copying and process serving staff, the maintenance of the prescribed registers, the correct preparation of the periodical returns and the classification and arrangement of records. It should also be ascertained whether there exists for each Court and

establishment a written order distributing the work among its ministerial officers and whether each officer has a typed copy detailing his own duties and has a full day's work.

**568.**

If the District Judge requires the help of the clerk of Court or any other ministerial officer he may allow him to examine only the work of the Ministerial establishment. In no case shall the District Judge allow the clerk of Court or the ministerial officer to examine the judicial diary and the records, whether pending or disposed of or to offer any remarks on the work of judicial. Although the clerk of court or other ministerial officer may draft the portion of the note dealing with the work of the ministerial establishment, the responsibility for the note as a whole is that of the District Judge and no remarks adversely criticizing any official which may affect that official's further should be included unless the District Judge is satisfied that the remarks is justified.

**569.**

The District Judge should examine not only the pending records of the Court but also a number of disposed of cases. He should pay special attention to long pending cases in order to see whether delay has been caused by inadequate control or incorrect procedure. A number of matters requiring his particular attention have been indicated in preceding rules and they should invariably be the subject of comment. In addition such matters as punctuality in attendance, satisfactory arrangement of work, legibility, control and inspection of subordinates should be touched on. Note. - The remarks made in the inspection note should invariably be considered while making yearly and half-yearly confidential reports on the officer concerned.

**570.**

(1) Inspection notes other than those of officers at headquarters should be typed in duplicate. Every note should be divided into numbered paragraphs and typed on good paper of foolscap size, both sides of each half sheet being utilised. Each sub-paragraph should be given in sub-number of furnished with a side heading, so that reference to any portion of a paragraph dealing several matters may be facilitated. The other half of each side will be occupied by the inspecting officer's remarks and at the inner edge a margin of one inch wide will be left for binding; the intervention space will serve for memoranda of explanation and compliance brief enough to be conveniently entered therein. Where more than a brief explanation or report of compliance is called for, a separate half-sheet should be used for the purpose. (2) When the note is prepared in duplicates the original note should be filed in the District Judge's Office and the duplicate should be sent to the Judge concerned, who will report thereon to the District Judge that action has been or is being taken with regard to the matters which call for action of explanation. Notes. - When an officer has left the station before or after the inspection and such defects and irregularities as call for his explanation or report are found in his work, a copy or extract from so much of the inspection note as concerns him should be forwarded to him through the District Judge under whom he works, for report.

**571.**

On the 15th January each year the District Judge shall submit to the High Court a statement of inspections made during the previous year in the following form. A similar statement should be submitted on the 15th April, July and October of inspections made in the previous quarter:-Statement of the Court and office establishment in the.....District inspected during the quarter/year ending....

Name of each Court and establishment of which inspection is required	Date of last inspection	Date of sending copy of inspection note by the District Judge to the Court concerned	Date of returning copy of inspection note by the Court concerned to the District Judge	Explanation of failure to inspection
1	2	3	4	5

Note. - The statement should be written up from time to time as inspections are made.

**572.**

The High Court may send for any note of inspection recorded by the District Judge and pass such remarks thereon as it may think fit. If necessary it may call for further explanation or report from the Judge or Judges concerned. After perusal the note will be returned to the Court concerned through the District Judge.

**573.**

Discussion of collateral questions or matters of special interest or importance (for example, the need for modification or introduction of a rule) or of questions of doubts or difficulty arising from the rules and orders of the High Court and any suggestion in that direction should not find place in the inspection notes, but should form the subject of a separate reference.

**Chapter XXIX****Correspondence and despatch of papers by post****1. Correspondence****A. Registration****574.**

A register of correspondence received in, and issued from, the office of the District and Sessions Judge shall be kept in the prescribed form (Form No. XV-80). The serial numbering (column 1) shall commence afresh on the 1st January each year. The date, month and year and the day of the week

shall be written in red ink across the page above the entries for each day.

## **575.**

(1) Letters and memoranda received shall at once be registered before being put up (with appropriate reference) for orders and those to be issued shall be registered on the day of despatch and shall bear the date of that day. Note. - Correspondence with subordinate Courts including small cause Courts in the district should be conducted by memoranda and not by official letters. (2) The following documents only shall be entered in given number in the correspondence register:-(a) Letters, official and unofficial memoranda and endorsements forwarding any document which is registered, except those of an ephemeral nature. Note. - Circular letters or memoranda which are sent to a number of officers shall be given only one number in the register. (b) Objection statements received from the Accountant General or Treasury officer and replies thereto. (c) Endorsements forwarding notice for publication in the Madhya Pradesh Gazette, if not of a judicial nature. (d) Petitions for mercy. (3) The following documents should not be registered:-(a) Letters, official and unofficial memoranda and endorsement of an ephemeral nature. (b) Application for appointment in ministerial service, whether received from other offices or from outsiders. (c) Periodical returns unaccompanied by letters or memoranda. (d) Reminders. (e) Memoranda calling for or acknowledging the receipt of records, if not in letter form. (f) Demi-official letters. (g) Endorsements forwarding notices for publication in the Gazette in connection with a judicial proceeding, e.g., insolvency notices, etc. (h) Postal copies of telegrams. (i) Charge reports.

## **576.**

The correspondence clerk shall note in red ink, on the face of each issue, immediately below the register number, the serial number of the major head, the minor head and the case file to which it belongs, and enter other details in column 7 of the correspondence register. If the letter or memorandum be eventually placed in a personal file or a bundle file under Rule 614 or 615, infra, he shall write "P.F." or "B.F." below the register number.

## **577.**

If a receipt can be brought on a pending file it should be brought on that file; otherwise a new case file should be opened, numbered and entered in the index of case files. The number of the major head, the minor head and the case file to which it belongs shall be noted in each letter in red ink under the serial number. The file should then be put up with papers if any, which will be required for reference in disposing of it. To avoid multiplication of case files great care should be taken in opening new case files. The serial number of the case file with major and minor heads on which each document received during the day has taken shall be entered in column 7 of the Correspondence Register. No case file shall be opened for papers of an ephemeral nature and no reminders shall be filed in case files. Papers of an ephemeral nature and reminders shall be put up on routine note sheets.

**578.**

On the first day of each month the entries in the Register of Receipts and Issues shall be examined and all unanswered references pending more than fifteen days shall be brought to a pending list (Form No. XV-83). The clerk of Court is responsible for the correctness and completeness of this list and shall lay it, not later than the 7th of each month, before the District and Sessions Judge for perusal and orders.

**579.**

While under disposal the papers relating to one subject shall be kept tagged together on a file board in chronological order, the earliest paper being uppermost and all note-sheets being placed on the top. The paper under disposal should be turned over so as to be immediately below the note sheets.

**580.**

New case files, when opened, shall be entered in the index of case files (Form No. XV-86) which shall be typed day by day as new case files are formed, a separate page or pages being allotted to each minor head. The sheets of the index for the current year shall be kept in file boards, one board for each major head. At the end of the year the index shall be bound in one volume.

**581.**

Records shall be arranged under the major and minor heads prescribed in Schedule I annexed. Under each minor head papers shall be arranged in case file, each case file dealing with one subject and the serial numbering commencing afresh at the beginning of each calendar year :Provided that subjects on which there are constant unimportant references may be treated in one case file for the whole year :Provided also that correspondence which begins in one year and ends in another shall be treated as belonging to the year in which it was started. Any letter or memorandum which affects the disposal of, or is not likely to be referred to, otherwise than in connection with a judicial case, may be filed with the record of that case, and when a letter or memorandum is so filed the description of the record shall be noted in column 7 of the Register of Receipts and Issues.

**582.**

(1)The papers in a case file shall be arranged in the following order:-(a)Note sheets.(b)Correspondence in chronological order.(2)When arranging papers for record each sheet shall be paged on the front only, i.e., only old pages will be numbered and the whole bound in a case file cover (Form No. XV-68). All entries regarding previous and subsequent references shall be made in the spaces provided for the purpose on the front of the case file cover. If any paper is subsequently removed from a case file a slip showing what has become of the paper shall be inserted in its place.



**583.**

All the case files of one year under the same major head shall be kept together between double file boards bearing a label which should show the major and minor heads and the year to which the files relate. No case file shall be removed from its place without a requisition slip (Form No. 11-210) being put in its place. When the file is returned the requisition slip shall be removed and destroyed.

**584.**

The bundles of case files under each minor head shall be arranged in sequence under each major head and the compartments of the almirahs or record racks shall have labels showing the numbers of the major and minor heads and the year to which the files belong.

**585.**

Personal files shall be maintained for menials and process-servers. All papers concerning these officials shall be kept in these files save those relating to matters of appoint and leave. All personal files shall be paged and indexed shall have front sheet showing punishment awarded from time to time. Papers regarding the appointment and leave of these menials shall be filed in case files specified in Rule 618. Note. - Papers relating to casual leave shall be kept in bundle files.

**586.**

Papers of an ephemeral nature and reminders shall be kept in bundles. Correspondence regarding indents and the undermentioned periodical returns shall, notwithstanding in the foregoing rules, be kept in bundles along with the connected indents and returns, respectively, and shall be arranged as follows:- (a) Papers of an ephemeral nature and reminders shall be kept in monthly bundles and these bundles for a year shall be kept together. (b) Indents-All papers for a year shall be kept together. (c) Monthly and half-yearly returns of civil work. The returns and connected papers for all parts of the same year shall be kept together. (d) Quarterly Criminal Statements-The statements and connected papers for all quarters of the same year shall be kept together. (e) Annual Civil and Criminal Notes and Statements--The District Civil Note shall be kept with the statements and other connected papers. All papers connected with a District Criminal Note shall be kept together arranged, where there are more districts than one in the sessions Division, by districts. The sessions Judge's note will be kept with the statements and other connected papers, but separately from papers connected with the District Notes. (f) Tahsildar and Tahsildar Statements-All papers for a year shall be kept together.

**587.**

(1) Elimination shall be carried out by destroying the entire case files or parts thereof which contain unimportant papers. The case files of the fourth preceding calendar year shall be examined during the Civil Court vacation of each year and the entries in the index regarding the case files which

according to Schedule II annexed, are liable to elimination shall be marked with the letter D in red ink. These case files shall then be collected together and scrutinised by the clerk of Court, who shall refer any doubtful case to the District and Sessions Judge for orders. [The elimination may be done by shredding or by such other mode as the District Judge may deem proper] [Substituted by Notification No. 17/E/47/21-B/1I/94, dated 15-1-1996.](2) Papers relating to the following subjects should be preserved for not less than the periods prescribed against them:-;

Subject Period of preservation

(1)	(2)	
1.	Invalid pensions(a) Superior servants....(b) Inferiorservants....	25 years5 years
2.	Other kinds of pensions and gratuities	5 years
3.	Correspondence in cases in which pensions were sanctioned by ahigher authority than District Judge	3 years
4.	Service Books	As prescribed by State Government from time to time.

Note 1. - The periods shall be reckoned from the date of retirement or date of sanction of pension whichever is later. Note 2. - When a pensioner is dead the record shall be preserved for 5 years from the date of sanctioning family pension. Note 3. - Attention is also drawn to the rules contained in Appendix 12 to the M.P. Financial Code, Volume II.(3) The personal files of Advocates and Pleaders shall be destroyed after the death of the Advocate or Pleader.(4) The personal files of process-servers and other menials should be preserved for the following periods:- (a) In case of resignation or death - Three years. (b) In case of retirement - Five years. (c) In case of dismissal or removal - Twelve years.

## 588.

The papers mentioned in clauses (a), (b), (c) and (d) of Rule 586 shall be eliminated after two years from the close of the year to which they relate. The papers mentioned in clauses (e) and (f) shall be eliminated after five years from the close of the year to which they belong. D. Gazettes, printed serials, etc.

## 589.

One copy of each Gazette, printed report or other printed publication of similar nature which is received in office shall be kept for permanent record. Such publication shall be arranged in order, series by series in the shelves set aside for the purpose. Periodical publications, such as Gazette, shall be properly and promptly bound. Spare copies shall be kept apart and when the space occupied by them becomes excessive, the fact shall be reported to the High Court for orders regarding their disposal.

**590.**

The following shall be preserved for the period shown against each:-

S. No.	Name of register	Period of preservation after each register is completely filled
(1)	(2)	(3)
1.	Casual Leave Register of officers (Form No. XV 123).	
2.	Casual Leave Register of office, establishment (Form No. XV123).	
3.	Station Dak Book (Form No. XV 9).	One year.
4.	Outstation Dak Book with stamp account (Form No. XV 79).	
5.	Attendance Registers (Form No. XXVI50).	
6.	Register of correction list to Manuals, Codes, etc. (Form No. XV 8).	One year.
7.	Stock Book of Stationery.	One year.
8.	Stock Book of Form (Form No. XV 5).	One year.
9.	Stock Book (Form XV 118).	Four years.
10.	Contingent Register (Form No. I 72).	Five years (complete account years)
11.	Register of Furniture.	Five years
12.	Register of Receipts and Issues (Form No. XV 80).	Ten years
13.	Index Register of case-files (Form No. XV 86).	For ever
14.	Office Order Book.	Do
15.	Register of recognized clerks of legal practitioners.	Do
16.	Register of Licensed Petition writers (Form No. 11 83).	Do

I

I-Judicial.

Major Head II-Administrative.

III-Finance.

IV-Works.

Minor Heads under each Major Head

I-Judicial II-Administrative

No.	Name	No. Name
(1)	(2)	(3) (4)
1.	Administrator - General	1.

		Arrangement and elimination of records - Administrative.
2.	Appeals	2. Arrangement and elimination of records - judicial
3.	Arrangements for holding sessions.	3. Confidential reports
4.	Bills	4. Copyists
5.	Civil powers	5. Departmental examinations
6.	Civil reports and returns	6. District and Sessions Judge-Appointment, leave, transfers,etc.
7.	Copying	7. Forms
8.	Criminal lunatics	8. Inspection of Courts
9.	Criminal powers	9. Inspection of jails
10.	Criminal reports and returns	10. Loss or theft of records
11.	Distribution of Civil returns.	11. Ministerial establishments of district and sessions judges
12.	Insolvency	12. Miscellaneous
13.	Jurors and assessors	13. Recognised clerks of legal practitioners
14.	Legal Practitioners Act	14. Petition-writers
15.	Miscellaneous	15. Process-serving establishment
16.	Nazarats	16. State Civil Service (Judicial Appointments, leave, transfer,etc.)
17.	Petition-writing	17. Public Prosecutors.
18.	Probate and Letters of Administration	18. Purchase and supply of books and printed publications
19.	Process-serving	19. Reports and returns other than civil and criminal
20.	Rules under the Madhya Pradesh Civil Courts Act	20. Service books and character rolls
21.	Rules under Civil Procedure Code	21. Stationery
22.	Rules under Criminal Procedure Code.	22. Vacation and Holidays
23.	Rules under other Acts.	
24.	Sessions cases.	
25.	Suits to which Government is a party	
26.	Suits and cases-other	
27.	Supply of Acts	
28.	Unclaimed Property	
29.	Wards	

III-Finance IV-Works

No.	Name	No.	Name
(1)	(2)	(3)	(4)
1.	Advances	1.	Major works
2.	Budget	2.	Minor works
3.	Contingencies	3.	Miscellaneous.
4.	Deposits	4.	Repairs
5.	Diet-money	5.	Residential buildings
6.	Embezzlement	6.	Transfer of Buildings
7.	Grain Compensation		
8.	Life insurance and provident funds		
9.	Miscellaneous		
10.	Pensions and gratuities		
11.	Permanent advance		
12.	Refunds and remission		
13.	Salaries and Allowances		
14.	Securities of officials		
15.	Supply of liveries, belts and badges, etc. to peons		
16.	Tauzis		

## II

Section	Description of documents	Illustrations
(1)	(2)	(3)
I.	Correspondence relating to ephemeral details of administration, including forwarding letters, reminders, letters calling for proceedings, acknowledgments, etc.	Correspondence and papers on the following subjects:-Liveries, badges, and belts for peons, purchase of furniture, supply of stationery and forms. Delivery and despatch of packages, supply of typewriters. Security of officials. Transfer of prisoners to and from other provinces. Sanction to incur unusual contingent expenditure. Purchase of Books, Investiture of officers with civil and criminal powers. Distribution of work. Temporary establishment. Appearance at departmental examination, exemption therefrom, etc. Lists of Pleaders and Advocates, etc. Supply of Acts, printed reports etc., and their distribution. Supply of circulars, etc. Monthly Tauzis, Budget estimates permanent establishment returns. Return of probates.
II.	Papers affecting the rights of individuals or their	Office copies of salary bills, travelling allowance bills. Intimation slips of salaries and allowances.

	official positions, if final orders have been passed.	Refund Orders.
II.	Application for appointment, leave, etc., if the subject-matter of the application has been finally disposed or.	Applications for posts in the Ministerial line. Correspondence regarding (1) leave applications, (2) transfers of judicial officers and Ministerial staffs, (3) confirmation; promotion or reduction of officials.
IV.	Papers relating to minor work.	Correspondence relating to minor works.

## 2. Despatch of Papers by Post

### 591.

The records or papers to be sent should, if packing is necessary be packed and labelled by the Court clerk or by the dafter. The Court clerk should write the address on the cover or the packet and the enter the cover or the packet in the station dak book and send it with that book to the clerk of Court's muharrir. The entry in column 4 of the station dak book (person to whom sent) should be "clerk of Court's muharrir", while in column 3 (Brief description of paper or article sent) should be written "close cover (or packet) addressed containing ... the name of the peon who takes the cover or packet to the clerk of Court's muharrir should appear in column 6 (Remarks). The clerk of Court's muharrir should put his signature in column 5 against each item receive. He should then affix the necessary service postage stamps and after entering the cover or packet in the outstation dak book sent it to the post.

### 592.

The procedure laid down in the preceding rule should be followed at outlying stations, the Naib-Nazir taking the place of the clerk of Court's muharrir and the necessary packing being done by the Court clerk or the farrash.

### 593.

Packets or covers containing records should invariably be sent by registered post. Expenditure on postage should be kept as low as possible. Letters or memoranda addressed to different officers individually should be sent in separate covers whether or not the offices sit in the same building. In the case of outstations having one or more Courts, everything connected with the Court office should be despatched in one envelope and this may include summonses issued from a common Nazarat, though of different Courts. A parcel must not contain more than one written communication of the nature of a letter or memoranda; it should contain only one relating to the parcel alone. Rules for Petition Writers General (1) In these Rules "Petition" means a document written for being presented to a Civil Court and includes a complaints, written statement and memorandum of appeal. "To practise as petition writer" means to write petitions as defined above for hire and includes the writing of a single petition for hire. A petition-writer is said to practise in a Court when he writes petitions for the purpose of being presented to that Court. (2) No person shall practise as petition-writer unless he

has been duly licensed under these Rules :Provided-(a)that any person licensed under any rule either to enforce shall be deemed to have been licensed under these rules;(b)that no such licence is necessary in respect of a petition meant to be presented to a Court in which a legal practitioner is entitled to practise if the petition is written by him or by his clerk and is signed by the legal practitioner.(3)No petition shall be rejected merely on the ground that it has been written by a person who is not a licensed petition-writer. Every petition shall show clearly the name and designation of the person by whom it has been scribed and the Court may refuse to accept a petition which does not comply with this direction.Licensing of Petition-Writers(4)The number of licences to be granted under these Rules shall be in accordance with the scale fixed by the District Judge for his district. The scale may be altered when necessary, but licences should not be granted indiscriminately without reference to the fixed scale.(5)Any person above the age of 20 years may apply to the District Judge of the district in which he desires to practise for being licensed as a petition-writer.(6)(i)The application shall be written by the application qirh hia own hand and shall state-(a)the applicant's name, father's name, date of birth according to the English Calendar, residence, educational qualifications and present occupation (if any);(b)the language or languages with which the applicant is acquainted;(c)the names of two respectable persons to whom reference may be the applicant's character.(ii)If the applicant has been convicted of any criminal offence or removed from Government service, the fact shall be stated in the application.(iii)If the applicant is in the service of Government or of a legal practitioner, his application shall state that he is prepared to resign such service on being licensed as a petition-writer.(7)The District Judge to whom the application is made may, in his discretion, on being satisfied-(a)that the applicant is over 20 years of age;(b)that he is of good character; and(c)that he is otherwise eligible;grant the applicant a licence in the prescribed form. No person shall be licensed as a petition-writer whilst he is in the service of Government or of a legal practitioner.(8)Every appointment will be probationary in the first instance and no probationer will be confirmed unless he satisfies the District Judge-(a)that he is able to draw up in a legible hand a clear and concise application, plaint, written statement or memorandum of appeal in the language of the Court in which he practises;(b)that he is acquainted with the provisions of the Civil Procedure Code, the Court Fees Act, the Stamp Act and the Limitation Act, so far as Knowledge of these Acts is necessary for the efficient performance of the duties of a petition-writer.(9)A register of licensed petition-writer should be maintained in the prescribed form in the office of every District Judge. A page or pages of the register will be set apart for each petition-writer.Conduct of Petition-Writers(10)Every licensed petition-writer shall maintain a register in the prescribed form and shall enter therein every petition written by him, and shall produce the register for the inspection of any judicial officer when required to do so.(11)Every licensed petition-writer shall, at his own expense, provide himself with an official seal of the following pattern.Seal(12)Every licensed petition-writer in writing petitions, shall confine himself to expressing in plain and simple language such as the petitioner can understand, and in a concise and proper form, the statements and objects of the petitioner, and shall not introduce any argument or quotation from a law report or other law book, or refer to any decision not brought to his notice by the petitioner.(13)Every licensed petition-writer shall affix his seal (with his name and license number filled in) on every petition written by him and shall enter on such petition the number which it bears in his register and the fee which has been charged for writing it.(14)Every licensed petition-writer shall re-write, at his own cost, any petition written by himself, when required to do so by the order of a competent authority.(15)(i)A licensed petition-writer shall charge such fees only

as may be prescribed by the District Judge not exceeding the scale hereto annexed. He shall note in the petition and also in the appropriate columns of his register the amount actually received by him.(ii)A licensed petition-writer shall not take payment for his service by an interest in the result of any litigation in connection with which he is employed and shall not find out contribute towards the funds employed in carrying on any litigation in which he is not otherwise personally interested.(iii)Every licensed petition-writer shall give to his employer a receipt for the amount received by him specifying exactly what the money was received for, for example, writing fees or costs, and if for costs, for what costs, e.g., plaint, process-fee, etc. The details shall be set out separately either in the receipt itself or on a separate piece of paper attached to it.(16)A licensed petition-writer shall not accept any mukhtar nama, whether general or special, for the conduct of any case in a Civil Court other than a case in which he is himself a party.(17)Every licensed petition-writer-(a)who resigns or is removed from his appointment.(b)who enters the service of Government or of a legal practitioner, or(c)who is suspended or dismissed under these rules, shall forthwith surrender his licence to the District Judge.Procedure in Dealing With Breach of Rules(18)Any judicial officer who, on the representation of any person employing a petition-writer, and after hearing such petition-writer (if he desires to be so heard) finds that the fee charged for writing a petition presented in his Court was excessive may, by order in writing, reduce the same to such sum as appears to be, under the circumstances, reasonable and proper, and may require the petition-writer to refund the amount received in excess of such sum. An order passed under this rule shall not be revised except by the officer who made it.(19)Any judicial officer may order a licensed petition-writer to re-write any petition written by him which contravenes Rule 12 or is illegible, obscure or prolix or contains any irrelevant matter or misquotation, or is, from any other cause, in the opinion of such officer, informal or otherwise objectionable. An order passed under this rule shall not be revised except by the officer who made it.(20)Any person who breaks Rule 2 shall be liable to a penalty not exceeding fifty rupees.(21)any licensed petition-writer who breaks any of the Rules 10, 11, 13, 15, 16 and 17 shall be liable to a penalty not exceeding fifty rupees.(22)Breaches of rules specified in Rules 20 and 21 shall be cognizable by the District judge and no penalty shall be inflicted in respect of such breaches unless the person charged has had an opportunity of defending himself.(23)Any probationer who fails to satisfy the District Judge on the points mentioned in Rule 8, within one year from his being appointed a probationer, is liable to be removed from his appointment by order of the District Judge.(24)Any licensed petition-writer who-(1)habitually writes petitions contrary to Rule 12 or containing irrelevant matter or which are unnecessary or informal or otherwise objectionable; or(2)in the course of his business as petition-writer uses disrespectful, insulting or abusive language; or(3)is found to be incapable of efficiently discharging the functions of a petition-writer; or(4)habitually remains absent during court-hours or is absent from his headquarters for a considerable period without sufficient cause; or(5)by reason of any fraudulent or improper conduct is found to be unfit to practise as such; or(6)is convicted of a criminal offence;may be suspended or dismissed by order of the District Judge.(25)No appeal shall lie from any order passed under any of the above rules.(26)The High Court will exercise general powers of superintendence and control with regard to orders passed under Rule 20, 21, 23 or 24 in the same manner as with regard to other administrative orders of the District Judge.Maximum scale of fee

Name of documents



## Scale of fees

For every plaint or memorandum of appeal in which the value of the claim does not exceed-

	Rs.
Rs. 50	0.50
Rs. 100	1.00
Rs. 200	1.50
Rs. 300	2.00
Rs. 500	3.00
Rs. 1,000	4.00
Rs. 5,000	5.00
above Rs. 5,000	8.00
Where no value is fixed	1.50

For every application, petition, notice, statements, affidavit or other document not exceeding 90 words in length 0.25

For every additional folio of 90 words or part thereof: 0.25

Provided that if in any case the fee chargeable on a plaint or memorandum of appeal according to the above scale is lower than the fee chargeable on it as a petition, it will be chargeable as a petition. 'Plant' includes registered address, any list of documents required by Order VII, Rule 14, Civil Procedure Code, any affidavit as to the correctness of any copy of any account and any similar document filed along with the plaint. 'Application' includes any inventory or list of property or similar document filed with it and also registered address.

## of Forms

Form of licence Certified that.....son of.....resident of.....district and is hereby permitted to practise as such in the.....has, this day, been licensed as petition-writer in the manner prescribed by the rules relating to petition-writers in Madhya Pradesh and subject to the provisions of the said rules. Given under my hand and seal of this Court this..... of 20.....at.....Seal.....District Judge Register to be maintained by every licensed petition-writer

Serial Number of petition	Date on which petition was written	Name, parentage and residence of the person at whose instance the petition was written	Description of petition
(1)	(2)	(3)	(4)
Brief abstract of contents of petition	Value of Court fee labels affixed to the petition	Fees charged for writing the petition	Remarks
(5)	(6)	(7)	(8)
			Signature of the petition-writer
			(9)

Register of licensed petition-writersNote. - One or more pages to be set apart for each petition-writer.  
 Page of RegisterRegister No.Name of petition-writerFather's nameResidencePlace of businessDate of grant of licenceDate of confirmation of appointment\* RemarksNote - In the column of remarks will be entered a note of any penalty imposed under Rule (20) or (21) and of any orders passed under Rule (18), (19), (22) or (23).Notification[In exercise of powers conferred under Rule 505 of Madhya Pradesh Civil Court Rules, 1961, the High Court is pleased to accord special sanction, enhancing the limit of amount in the hands of copyist as under :-

(1) Amount in the hand of Head Copyist at District Head Quarter Rs. 500/-

(2) Amount in the hands of Copyist at outstation Rs. 200/-]

[Inserted by Notification No. 16290-III-1-5-57-CH-23, dated 4-12-1995, Published in M.P. Rajpatra, Part 1, dated 30-6-1995.][Notification No. 2156, dated 24th March, 1966] [Published in M.P. Rajpatra, Part IV (Ga), dated 1-4-1966 at pages 123-127] - In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of the Madhya Pradesh Civil Courts Act, 1958, and all other powers enabling and in supersession of the existing rules in force in the Civil Courts in any part of the Madhya Pradesh on the concerned subject, the following rules relating to the Forms and Stationery and Annual Inspections have been made by the High Court of Madhya Pradesh, Jabalpur and are published for general information.