CHAPTER 1

Practice in the Trial of Civil Suits

Part A
GENERAL

Court Hours, Holidays and Cause Lists

1. Court hours—All Civil Courts in Punjab and Delhi shall sit at the same hour on every day that is not a holiday for Civil Courts. The ordinary Court hours are from 10 A.M. to 4 P.M. with an interval for luncheon from 1 to 1.30 P.M. Saturdays shall be full working days for Courts and offices attached thereto but the second Saturday of each month may be observed as a close day. The working hours for offices to attached to Civil Courts are from 10 A.M. to 5 P.M.

2. Taking up cases after Court hours—No new case should be taken up after the closing hour of the Court but the hearing of a case taken up before that hour may, if necessary, be continued for a short time.

3. Holidays—The holidays allowed to the Civil Courts are annually prescribed by the High Court, under the provisions of Section 47 of the Punjab Courts Act, and no other holidays can be allowed by any other authority. The list of Civil holidays comprises general holidays and local holidays, the latter being usually limited to three days in the year for each district.

4. Taking up cases on holidays—Civil suits and appeals ought not, as a rule, to be taken up during the vocation or on a holiday; but any civil suit or appeal may be legally heard, by consent of the parties during the vacation or on a holiday, if the Presiding Officer to the Court thinks it expedient, for any reason, to keep his Court open for the purpose.

COMMENTS

Consent of parties is necessary for hearing civil cases on holidays. Where arguments were heard during Court vacations in absence of party, and order passed ignoring the objection taken by party. The order as well as the earlier order made after hearing arguments, are unsustainable. 1969 Curr. L.J. 202.

5. Attendance of ministerial establishment—The members of the ministerial establishment of the Courts should (subject to any special rules regarding the Vacation Department) attend their office on all days except on holidays allowed to Civil Courts. An official may, however, be ordered by the Presiding Officer to attend office on a holiday to clear off arrears. An official

should not except in most exceptional cases be made to attend on a holiday pertaining to his religion.

6. Preparation of cause lists—Cause lists of cases fixed for each day should be prepared a day before. These lists should be exhibited in the Court room, or the verandah of the Court-house, at least by the afternoon of the day preceding that to which they relate, for the information of parties and their pleaders and the order of causes in the list should not be departed from without cogent reasons, unless the case be settled by compromise or the claim be admitted before the day fixed for trial. A strict adherence to this practice will secure punctual attendance and greatly promote the despatch of business and the convenience of parties and witnesses. Cases should as far as possible be so arranged in the cause lists that the litigants may not have to wait long for simple cases and petty work such as miscellaneous applications, executions and objections, etc.

COMMENTS

This rule prescribes preparation of course list daily but not its maintenance for ever. *Tilak Ram & Sons* v. *State of Punjab*, AIR 1973 Punjab 359.

7. Form of cause list—Cause lists should be in the following form :

In the Court of.....……

Cause list for (Day of the week and date).....…….

Serial No.	No. and Description of the case	Plaintiff Appellant or Petitioner	Defendant or Respondent	Stage of the case, viz., for issues, evidence arguments	Remarks
1	2	3	4	5	6

Part B
RECEPTION OF PLAINTS AND APPLICATIONS

1. Not to be received on holidays—Plaints and petitions should be received by the Civil Courts on every day which is not an authorised holiday, during office hours.

2. (Not applicable for Delhi)

3. (i) *Distribution of cases*—Plaints and petitions presented will be received and distributed by the District Judge who may delegate this power under Section 37 if the Punjab Courts Act to any Subordinate Judge and should always do so when it is for the convenience of the litigants.

Regard should be had to the provisions of Sections 15 and 20 and Order IV, Rule 1, of the Code of Civil Procedure, in framing directions regarding the reception of Civil suits.

(ii) *Duty of distributing officer*—The work of distribution of cases should not be left to the Reader or the Clerk of Court. The Judge should attend to it personally, noting in his own hand the name of person presenting the case and the Court to which the case has been assigned for trial. He should also inform the person presenting the plaint or petition of the date on which he is required to attend the Court to which the case is sent and note the fact of his having done so in his order. This will avoid the necessity of a notice being issued to the plaintiff or petitioner by the Court to which case is sent.

(iii) *List of cases assigned to be exhibited*—At the end of each day a list of all the cases so distributed should be exhibited in the Court of the distributing officer. Similarly each Court should exhibit at the end of each day a list of the cases assigned to it by the distributing officer.

4. Examination, endorsement and distribution—Every plaint or petition should, if possible, specify the provision of law under which it is presented and should at the time of its reception, be at once endorsed with the date of its receipt, and such endorsement should be signed by the receiving officer. The Court-fees should be forthwith examined and cancelled in the manner prescribed in that behalf. The receiving officer should prepare a list of all plaints and applications received each day, and be held responsible that they are duly distributed in accordance with the orders passed thereupon, and the general instructions (if any) given by the District Judge or the Senior Sub-Judge in that respect.

5. Insufficiently stamped plaints etc.—It shall be duty of the Superintendent of the District and Sessions Judge, Clerks of Court of the Senior Sub-Judge and Judges of Small Causes Courts and Readers of all other Subordinate Judges to see that appeals, plaints and petitions etc., received in the Courts to which they are attached, are properly stamped. When they are in doubt what Court-fee is due on any document, it shall be their duty to refer the matter to the Presiding Officer for orders.

These officials are primarily responsible for any loss of revenue caused to Government by insufficiently stamped documents having been received owing to their neglect, but the ultimate responsibility for the loss lies on the Judge of the Court whose duty it is to look into such matters either when the plaints are instituted or when the plaints came up for hearing before him.

Note—The clerk of Court to the Senior Sub-Judge is responsible for checking the Court-fee on those plaints only which the Senior Sub-Judge retains for trial by himself. In other cases the Reader of the Court to which the suit is sent for trial is responsible.

Provided that the personal responsibility of the officers concerned shall only be enforced where obvious mistakes have been made and not in cases in which a genuine doubt was possible regarding the correctness of the Court-fee due.

6. Transfer of cases to equalise work—The equal distribution of work amongst the Courts available can always be effected by the transfer of cases when necessary from one Court to another under the authority vested in the District Judge.

When a case is transferred by judicial order, the Court passing the order should fix a date on which the parties should attend the Court to which the case is transferred.

7. (a) *Petition box*—The petition box shall be placed in the verandah of the Court house about one hour before the Court sits, an official being specially made to attend early for this purpose. It shall be opened in the presence of the Judge about 15 minutes after the Court opens when all petitions shall be initialled by him. The Judge shall pass proper orders forthwith or inform the petitioner when orders will be ready after the necessary *Kaifiyats* have been put up. The box shall be replaced in the verandah and opened again shortly before the Court rises for luncheon in the presence of the Judge and the same procedure followed. It shall then be replaced once more in the verandah and opened for the last time 15 minutes before the time fixed for the rising of the Court and the procedure prescribed above followed. After the box has been opened for the third time, it shall not be replaced in the verandah but petitions, may thereafter be presented up to the closing hour of the Court to the presiding officer personally who shall receive them.

A list of all miscellaneous or execution applications, on which orders cannot be passed forthwith, should be prepared and exhibited outside the Court room specifying the date fixed for the disposal of each application.

(b) *Urgent cases*—In urgent cases the Judge may exercise his discretion and personally receive documents presented to him direct at any time.

(c) *Reception by ministerial establishment prohibited*—The members of the ministerial establishment are strictly forbidden to receive petitions, plaints or other documents direct from lawyers and their clerks or from litigants except when the Judge is on leave and no other judicial officer is incharge of his current duties. District Judge should, however, invariably make arrangements for the reception of plaints and petitions, etc., by another officer of a Court when an Officer is temporarily absent on leave, tour or otherwise.

COMMENTS

When the presiding officer of a Court has been transferred and his successor has not assumed office, the clerk of the Court is competent to receive the petition of plaint. *Tara Singh and others* v. *Ajit Pal Singh,* AIR 1972 Punjab 285.

(d) *Exceptions*—The above orders do not apply to applications put in by counsel for the inspection of records which may be presented to the Presiding Officer personally, nor do they apply to *talbanas* and stamped postal envelopes filed by litigants, which should be received direct by the Ahlmad or the moharrir and a receipt given for the same whether demanded or not.

8. Who can file petitions etc.—Plaints and petitions must be filed, except, when otherwise specially provided by any law for the time being in force, by the party in person or by his recognised agent or by a duly authorised and qualified legal practitioner.

9. Recognised agents—Recognised agents are defined in Order III, Rule 2, of the Code of Civil Procedure, 1908. As to the appointment of a pleader, the Provisions of Rule 4 of Order III, Civil Procedure Code, as amended by Act XXII of 1926, and the instructions of the High Court given in Chapter 16, Part A, of this volume should be carefully studied.

10. Powers of Attorney—When parties appear by pleaders, or agents duly authorised in that behalf, their powers-of-attorney should, when practicable, be filed in original with the plaint. Where the power-of-attorney is a general one, a copy should be filed, the original being presented for verification. When so filed, the power-of-attorney will be considered to be inforced until revoked, with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or pleader or agent dies, or all proceedings in the suit are ended so far as regards the client.

11. Sending by post—The reception of plaints and petitions made under the Code of Civil Procedure for judicial purposes, by post, is irregular. All applications of a judicial nature received by post should be filed and on each application so filed an endorsement should be made to the effect that it was filed as not having been properly presented. This does not apply to applications for copies of judicial proceedings, which are not applications for judicial purposes made under the Code; but are applications dealt with under administrative authority.

Part C
EXAMINATION OF THE PLAINT

1. Examination—On the presentation or receipt of a plaint, the Court should examine it with special reference to the following points *viz:*

(i) whether the plaint contains the particulars specified in Order VII, Rule 1, and conforms to the other rules of pleadings in Orders VI and VII and rules made by the High Court thereunder;

(ii) whether there is *prima facie,* any non-joinder or mis-joinder of parties, or mis-joinder of causes of action;

(iii) whether any of the parties to the suit are minors and, if so, whether they are properly represented;

(iv) whether the plaint is duly signed and verified;

(v) whether the suit is within the jurisdiction of the Court or must be returned for presentation to proper Court (Order VII, Rule 10);

(vi) whether the plaint is liable to be rejected for any of the reasons given in Order VII, Rule 11;

(vii) whether the documents attached to the plaint (if any) are accompanied by lists in the prescribed form and are in order;

(viii) whether the plaintiff has filed a proceeding containing his address for service during the litigation as required by Rule 19 of Order VII as framed by the High Court;

(ix) in money suits, whether the plaintiff has stated the precise amount he claims;

(x) whether the plaintiff has stated in his plaint regarding the documents on which he relates his claim and are not in his possession and a statement in whose possession or power they are;

(xi) whether the plaintiff has filed the address of the party in the prescribed form.

2. Pleadings—The provisions of the Code, with regard to the pleadings (which term includes the plaint and written statements of parties) should be carefully studied. The principal rules of pleadings may be briefly stated as follows:

(a) The whole case must be stated in the pleadings, that is to say all material facts must be stated (Order VI, Rule 2).

(b) Only material facts are to be stated. The evidence by which they are to be proved is not to be stated (Order VI, Rules 2, 10, 11 and 12).

(c) The facts are to be stated concisely.

(d) It is not necessary to allege the performance of any condition precedent; and averment of performance is implied in every pleading but a non-performance of condition precedent, if relied on, must be distinctly stated (Order VI, Rule 6).

(e) It is not necessary to set out the whole or any part of a document unless the precise words thereof are necessary. It is sufficient to state the effect of the document as briefly as possible (Order VI, Rule 9).

(f) It is not necessary to allege a matter of fact which the law presumes, or as to which the burden of proof lies on the other side (Order VI, Rule 13).

(g) When misrepresentation fraud, undue influence, etc., are pleaded, necessary particulars must always be given (Order VI, Rule 4).

(h) When a suit is *prima facie* time-barred, the ground on which exemption is claimed must be stated (Order VII, Rule 6).

If the plaint is prolix (lengthy) or omits to give the necessary particulars or to specify the relief claimed precisely or is defective in any other respect, it should be returned to the party or his counsel for such amendment as may be necessary in the actual presence of the presiding officer after he has signed the endorsement. The Court has wide powers in this respect *(see* Order VI, Rules 16 and 17). Where amendment is directed, an order should be recorded by the Judge indicating the particulars about the necessary amendment and fixing a date for filing the amended plaint.

3. (a) **Non-joinder and mis-joinder of parties and causes of action**—Attention is drawn to the provisions of law contained in Orders I and II of the Civil Procedure Code relating to non-joinder of parties and mis-joinder of causes of action and parties and as to representative suits—

(i) *Joinder of parties*—Order I, Rules 1 and 3 provide in what case several plaintiffs or defendants may be joined in one suit.

(ii) *Representative Suits*—Order I, Rule 8 provides that when there are numerous persons having the same interest in one suit, one or more of such persons may sue or defend on behalf of all with the permission of the Court.

[1]The abandonment, withdrawal, compromise or agreement or satisfaction of any suit either in part or in whole is prohibited until all the persons interested in the suit have been given a notice at the expenses of the plaintiff.

The Court can substitute any person having interest in the suit if the person suing in representatives capacity is found acting *mala fide* and does not proceed with due deligence in the suit or defence as the case may be. The decree passed in such a suit shall be binding on all such persons for whose benefit it was instituted or defended. It is not necessary to establish that the persons suing or being sued or defended have the same cause of action in the suit.

(iii) *Objections as to non-joinder or mis-joinder*—Order I, Rule 9 lays down that no suit shall be defeated by reason of mis-joinder of parties and Order I, Rule 13 and Order II, Rule 7 lay down that objections as to non-joinder or mis-joinder of parties or causes of action, etc., should be made at the earliest stage of the case.

(iv) *Joinder of cause of action*—Order II, Rules 3-5 provide in what cases several causes of action may be joinder in one suit. When an objection duly taken with regard to mis-joinder of causes of action is allowed by the Court the plaintiff should be permitted to select the cause of action with which he will proceed and the Court should grant him time to amend the plaint by striking out the remaining causes of action. The Court should also give the plaintiff time within which to submit amended plaints for the remaining causes of action and for making up the Court-fee that may be necessary. (Order II, Rule 8, Civil Procedure Code.)

(v) *Separate trial*—Order I, Rules 2 and 3A and Order II, Rule 6 provide for power of the Court to order separate trials of the joinder of several plaintiffs or defendants or several causes of action "in one suit will embarrass or delay the trial" or is otherwise inconvenient.

(vi) *Striking out and adding parting*—Order I, Rule 10 gives power to the Court to strike out unnecessary parties and add necessary parties.

(vii) *Power of Court to take opinion on any question of law*—Rule 8A of Order I, empowers the Court to permit any persons or body of persons to take part in proceedings on any question of law which is directly and substantially in issue in the suit and to allow him to present his opinion.

(b) **Necessary parties**—Suits for inheritance, partition or declaration of right in order to effect a partition, contribution, redemption, foreclosure, administration of property, dissolution and winding up of a partnership, and the like, cannot be properly disposed of unless all persons interested in the matter are before the Court. Therefore, in cases of this description, if it appears that any necessary parties have not been joined the plaintiff should be ordered to join them.

4. Singing and verification—The plaint must be signed by the plaintiff, or, if by reason of absence or other good cause the plaintiff is unable to sign it, by his duly authorised agent. It must also be signed by the plaintiff's pleader (if any) and be verified by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

The personal attendance of the plaintiff in Court of the purpose of verification is unnecessary. The verification must, however, be signed by the person making it.

5. Jurisdiction—The jurisdiction of a Court depends upon the nature and value of the suit. If a suit is not within the jurisdiction of the Court, the plaint must be returned in the presence of the Presiding Officer for presentation to proper Court. In such cases the Presiding Officer must record on the plaint his reasons for returning it along with the other particulars mentioned in sub-rule (2) of Rule 10 of Order VII.

6. Rejection of plaint—If the plaint discloses no cause of action, or is barred by any law on the statements made therein, or if the relief claimed is under-valued or the plaint is not sufficiently stamped and the plaintiff fails to correct the valuation or pay the deficiency in the Court-fee within the time fixed by the Court the plaint should be 'rejected' under Order VII, Rule 11 reasons being recorded by the Presiding Officer in support of the order.

It should be noted that the correct order in such cases is to 'reject the plaint' and not 'dismiss the suit'. The rejection of a plaint does not preclude the institution of a fresh suit on the same cause of action, provided of course, it is not otherwise barred *(e.g.* by limitation etc.) by that time.

7. Comparison of copies of account—Copies of any shop book or account produced should be compared with the original by Chief Ministerial, Officer of the Court and the shop book or account should than be returned after making the entries relied upon (Order VII, Rule 17).

When a shop book or other account written in a language other than English or the language of the Court is produced with a translation or transliteration of the relevant entry, the party producing it shall not be required to present a separate affidavit as to the correctness of the translation or transliteration but shall add a certificate on the document itself that it is a full and true translation or transliteration or the original entry and no examination or comparison by the ministerial officer shall be required except by a special order of the Court.

8. Address of the parties—The proceeding containing address for service is intended to facilitate the service of processes throughout, the litigation (including appeals, etc.), and it is, therefore, important to see that it is duly filed at the outset according to this rule. Failure to comply with the rule is liable to be punished with dismissal of the suit but such an order may properly be passed in extreme case when the failure is intentional and contumacious.

[2]By virtue of addition of Rule 14A in Order 6 of C.P.C., plaintiff and defendant both are required to file address in Court which is known as registered address of the party for service of all processes issued by the Court. In case of change in the address, the parties are required to intimate the Court about the same. If any party gives incomplete, false or fictitious address, the Court can *suo motu* or on the application of any of the parties to the suit, stay the suit in respect of the plaintiff and strike out the defence of defendant. If the Court is satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, it can set aside the order of stay or striking of defence on any terms including imposition of costs and it shall appoint a day for proceeding with the suit or defence as the case may be.

9. Land Suits—If the plaint relates to agricultural land and the plaintiff is illiterate, if should be scrutinised with special care according to the following directions:

(i) The Presiding Officer shall ascertain by careful examination of the plaintiff or his agent, whether the prayer in the plaint corresponds in all particulars with the exact relief which the plaintiff orally describes himself as seeking. If the oral statements of the plaintiff or his agent are at variance with the written description of his claim, the plaint shall, in his or his agent's presence, be returned for amendment, and no amended plaint should be accepted until the Court is satisfied that it correctly expresses the claim which the plaintiff desires to establish.

(ii) Every such plaint shall be accompanied by a statement, in the prescribed form setting forth the particulars relating thereto recorded in the Settlement record and in the last Jamabandi. This statement shall be verified by a signature of the Patwari of the Circle in which the land concerned is situate. Where by reason of partition, river action or other cause, the entries in the Settlement record and in the last Jamabandi do not accord, a brief explanation of the reason should be given in the column of remarks. Where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map, drawn to scale, showing clearly the specific plot claimed, or in relation to which the decrees is to be made, and so much of the fields adjoining it, also drawn to scale, as may be sufficient to facilitate identification. The specific plot and adjoining fields shall be numbered in accordance with the statement and the map shall be certified as corrected by the Patwari or other person who prepared it. Where, however, the suit is for the whole of one or more khasra numbers as shown in the Settlement map, or a share in such numbers, and not for a specific portion thereof no map will be required unless it is necessary for other reasons to show the boundaries of such khasra numbers.

COMMENTS

Where the land was sufficiently described in the suit as Khasra No. 191. Which was exchanged. It was held that it was only after the consolidation of holdings proceedings that in lieu of this land some other land was allotted, particulars of which were given in the execution application. The executing Court, while determining the actual land in lieu of the land which was the subject matter of the decree, does not go behind the decree because, in Law, the decree holder is entitled to the possession of the land mentioned in exchange deed and if during the consolidation proceedings, certain other Khasra number is given in lieu of this land, the decree holder would be entitled to get possession of the same. *Ghisa Ram* v. *Sukhi Ram*, 1977 (79) Pun. LR. 745.

10. If the plaintiff seeks the recovery of money, the plaint, should state the precise amount, as far as the case admits. In a suit for mesne profits or unsettled accounts it is sufficient to state the amount approximately [3](or for movables in the possession of the defendant, or for debts of which the value he cannot deligently estimate) it is sufficient to state the amount approximately.

[4]**11. Suits by or against firms**—Suits by or against firms should be in the form prescribed in Order 30 by the CPC Amendment Act, 104 of 1976, it has been provided that Hindu Undivided Family carrying on business under any name may be sued in such name and style as if it were a firm name. Therefore the provisions contained in Order 30 are also applicable to Hindu Undivided Family.

[5]**12. Copies or concise statements of plaints**—When the plaint is admitted (after such amendment as may be found necessary), the plaintiff should be required to give (within such time as may be fixed by the Court or extended by) it as many copies of the plaint on plain paper as there are defendants is large, the Court may permit concise statement of the plaint to be supplied instead. Besides giving the number of copies or concise statements, the plaintiff is also required to pay the requisite fee for the service of summons on the defendant within the time fixed by the Court or extended by it. The plaintiff or the defendant is also required to state as to in what capacity he sues or is sued. Such copies or concise statements must be examined by the chief ministerial officer and signed, if found correct (Order VII, Rule 9).

13. Parcha Yadasht—When a plaint or petition is admitted and a date fixed for summoning of the other party or for any other purpose a memorandum (parcha yadasht) on strong paper in the form given below duly filled in shall be given to the plaintiff or the petitioner or his agent if he is illiterate and not represented by counsel.

Form of Parcha Yadasht

In the Court of…….at…….....

Court…….....

Hours from……..A.M. to……P.M…….....

(Suit……..)

Civil……..(Appeal…….) No……of 19…….....

(Miscellaneous Application)

Parties	Date of receipt	Date fixed for hearing	Place at which attendance is required	Purpose for which date is fixed	Remarks
1	2	3	4	5	6
A	By (Officer of Court)				

B	From Name and description of Party presenting				

Instructions

1. In the case of parties who are illiterate and unaccompanied by counsel a parcha is to be given without demand (1) to the person who presents the plaint, appeal or petition; and (2) when a case is not disposed of at the first hearing, to the defendant, or, if there be several, to such defendants or respondents as the Court may direct.

2. Every entry in any column after the first entry is to be signed by the officer making it.

14. Parcha Yadasht—A similar parcha shall be given to the opposite party when he appears if he is illiterate and not represented by counsel.

15. Filling in of the parcha—Parcha shall be filled in and signed by the Reader of the Court and given to the parties concerned in the presence of the Presiding Officer as soon as the date of hearing is fixed.

In Small Cause Courts and in the Courts of the District Judges this parcha may be filled in by any other official if the Presiding Officer so directs.

16. Filling in of the parcha—The above parcha shall be used throughout the proceedings and properly filled in whenever the case is adjourned. If the parcha is lost a duplicate should be given.

Part D
SERVICE OF PROFESSES

Issue of summons to the defendant

1. Summons for final disposal or settlement of issues—In Order V, Rule 5, of the Code of Civil Procedure, it is laid down that the Court shall determine at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit, and the summons shall contain a direction accordingly; and a proviso to the rule adds that in every suit heard by a Court of Small Causes the summons must be for the final disposal of the suit.

2. When summonses for final disposal may be issued—In determining whether the summons shall be for the settlement of issues only, or for the final disposal of the case, the Court must be

guided by the nature of the suit, and the probability or otherwise of the facts stated in the plaint being disputed by the defendant on grounds which will require the production of much evidence or will involve much contention. Where the case appears simple, and it seems probable that a correct judgment can be formed at the first hearing from the examination of the parties or their agents; and such evidence, oral or documentary, as they can bring with them, the summons should be for the final disposal of the case.

3. Adjournment of case in case of summonses for final disposal—It will however, be remembered that when the summons is for final disposal, the Court is not bound to dispose of the case on the date fixed for hearing, but can adjourn the case to another date, to enable the parties to produce evidence when this seems necessary in the interests of justice, and especially when there is reason to believe, that one party has been taken by surprise by the pleadings of, or statements made on examination by the other.

4. Suitors should be made to know what summons for final disposal means—Care should be taken to make suitors understand, in cases in which the summons is for final disposal, that all their evidence must be produced on the day fixed for disposal.

5. Distinctive colour of summons for final disposal—The form of summons for the final disposal of a suit should be printed in the vernacular on coloured paper, as this will tend to impress the distinction between this form and that for settlement of issue both upon the minds of the people, and upon the officers of the Courts. Presiding Officers should take care in such cases that the plaintiff understands that, if he wishes for the assistance of the Court for the purpose of causing the production of his evidence, he must make timely application.

6. Summons to be signed and sealed. Copy of plaint to accompany it—Summons should be clearly and legibly written and signed and, the seal of the Court must be affixed. Order V, Rule 1(3) of the Code requires that the summons shall be signed by the Judge or such officer as he appoints. In Courts, provided with a Superintendent or Clerk Court he may be authorised to sign summonses; in all other Court the Reader may be authorised to sign them. The signature should in all cases be fully and legibly written. A copy or concise statement of the plaint should be attached to each summons.

7. References—As regards the general procedure to be followed in effecting service of processes personal attention to service and proof of service, special procedure in the case of Government servants and persons in Military employ, etc., the time to be allowed for service of processes in foreign countries. Chapter 7, Volume IV, "Processes of Civil Courts" may be referred to. For service of Processes of Appellate Courts.

[6]Part E
WRITTEN STATEMENTS, SET OFF AND COUNTERCLAIM

1. When written statements are required—It is laid down in Order VIII, Rule 1, of the Code of Civil Procedure, that [7](a defendant shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence in duplicate, one for the Court and

the other for the plaintiff). In most cases, there should be no difficulty in presenting such a written statement on the date fixed, and no adjournment should be given for the purpose except for good cause shown, and in proper cases, costs should be awarded to the opposite side. Laxity in granting adjournments for the purpose of filing written statements should be avoided, and it should be noted that in extreme case contumacious refusal to comply with the Court's order is liable to be dealt with under Order 8 Rule 10, Civil Procedure Code.

2. Documents to accompany written statements—The combined effect of Rules 11 (6A to 6G) 1, and 12 of Order VIII is that the defendant should produce with the written statement: (i) all documents in his possession or power on which he bases his defence or claim to set off or (makes counter claim) if any; (ii) a list of other documents not in his possession or power but on which he relies in support of his case; (iii) a statement indicating his address for service; (iv) a duplicate of the written statement to be supplied to the plaintiff; and [8](v) a statement of documents not in his possession or power as in whose possession or power it is and where it can be found.

Sub-rule (2) of Rule 1 of Order VIII requires that if the list referred to in (ii) above is not annexed with the written statement or presented at the first hearing, it shall be presented written a period of ten days from the date of the first hearing.

3. Replications—When the defendant has filed a written statement, the Court may call upon the plaintiff to file a written statement in reply. Under Order VIII, Rule 9, the Court has power to call upon both parties to file written statements at any time and this power should be freely sued for elucidating the pleas when necessary, especially in complicated cases. In simple cases, however, examination of the parties, after the defendant has filed his written statement is generally found to be sufficient.

4. Separate written statements—In all cases where there are several defendants the Court should, as a rule, take a separate written statement from each defendant unless the defence of any defendants filing a joint written statement are identical in all respects. There may be different defences based upon a variety of circumstances and these should not be allowed to be mixed up together in a single statement merely because all the defendants deny the plaintiffs claim.

5. Court-fees on set-off and counter-claims—Written statements called from the parties may be on plain paper, but when the defendant claims in his written statements any sum by way of set-off or counter claim under Order VIII, Rule 6, and 6A to 6G, Civil Procedure Code, the statement must be stamped in the same manner as a plaint in a suit for the recovery of that sum.

6. Contents—A "written statement" is included in the definition of "pleading" *(vide* Order VI, Rule 1) and should conform to the general rules of pleading given in order VI as well as the special rules with regard to the written statements in Order VIII. All admissions and denials of facts should be specific and precise and not evasive or ambiguous. When allegations of fraud, etc., are set up, the particulars should be fully given. When any legal provision is relied on not only the provisions of law relied upon should be mentioned, but also the facts making it applicable should be stated. For instance when a plea of *res judicata* is raised, not only the

provision of law *(e.g.,* Section 11 of the Civil Procedure Code) should be mentioned, but also the particulars of the previous suit which is alleged to bar the suit.

Part F
SETTLEMENT OF ISSUES

1. Stress on framing correct issues—The trial of a suit falls into two broad divisions—the first leading up to and including the framing of issues and the second, consisting of the hearing of the evidence produced by the parties on those issues and the decision thereof. Issues are material propositions of facts and laws which are in controversy between the parties and the correct decision of a suit naturally depends on the correct determination of these propositions. The utmost care and attention, is therefore needed in ascertaining the real matters in dispute between the parties and fixing the issues in precise terms. In most cases the main difficulty of the trial is overcome when the correct issues are framed. A few hours spent by the Court at the outset in studying and elucidating the pleading, may mean a saving of several days, if not weeks, in the later stages of the trial.

2. Framing of issues by counsel—In some Courts, the framing of issues is left to the pleaders for the parties concerned. This practice is illegal and must cease. The Code contemplates that the Presiding Officer of the Court should himself examine the pleadings, get the points in dispute elucidated and frame issues thereon.

3. Elucidation of pleadings for framing issue—The main found-ation for the issues is supplied by the pleadings of the parties, *viz.,* the plaint and the written statements. But owing to the ignorance of the parties or other reasons, it is frequently found that the facts are stated neither correctly nor clearly in the pleadings. The Code gives ample powers to the Court to elucidate the pleadings by different methods prescribed in Order X, XI and XII of the Code and in most cases it is essential to do so, before framing the issues.

4. Elucidation of pleadings for framing issues—On the date fixed for the settlement of issues, the Court should therefore, carefully examine the pleadings of the parties and see whether, allegations of fact made by each party are either admitted or denied by the opposite party, as they ought to be. If any allegations of fact are not so admitted or denied in the pleadings of any party, either expressly or by clear implication, the Court should proceed to question the party or his pleader and record categorically his admission or denial of those allegations (Order X, Rule 1).

5. Examination of parties—Order **X,** Rule 2, of the Code, empowers the Court at the first or any subsequent hearing to examine any party appearing in person or present in Court or any person, accompanying him, who is able to answer all material questions relating to the suit. This is most valuable provision, and if properly used, results frequently in saving a lot of time. To use it properly, the Court should begin by studying the pleas and recording the admissions and denials of the parties under Order **X,** Rule 1, as stated above. The Court will then be in a position to ascertain what facts need further elucidation by examination of the parties. The parties should then be examined alternatively on all such points and the process of examination continued until all the matters in conflict and especially matters of fact are clearly brought to a focus. When

there are more defendants than one, they should be examined separately so as to avoid any confusion between their respective defences.

6. Examination of oath—From Order XIV, Rule 3, of the Code, it will appear that every allegation of fact made by any person other than a pleader should be on oath or solemn affirmation. Unlike a pleader, a mukhtar is not empowered to state the pleas of a party in a suit.

7. Personal attendance of parties—When a pleader for a party or his agent is unable to state the facts to the satisfaction of the Court, the Court has the power to require the personal attendance of the party concerned (Order X, Rule 4, Civil Procedure Code). It may also be noted here that the Court can require the personal attendance of the defendant on the date fixed for the framing of issues by an order to that effect in the summons issued to him. (Order V, Rule 3).

8. Examination should be detailed—In examining the parties of their pleaders, the Court should insist on a detailed and accurate statement of facts. A brief or vauge oral plea, *e.g.,* that the suit is barred by limitation or by the rule of *res judicata,* should not be received without a full statement of the material facts and the provision of law on which the plea is based. Similarly when fraud, collusion, custom, mis-joinder, estoppel, etc., is pleaded, the facts on which the pleas are based should be fully elucidated. Any inclination on a party or his pleader to evade straightforward answers to make objections or pleas, which appear to the Court to be frivious, can be promptly met, when necessary, by an order for a further written statement on payment of costs. The party concerned should also be warmed that he will be liable to pay the costs of the opposite party, on that part of the case at any rate, if he failed to substantiate his allegations.

9. Personal examination of the parties—Examination of the parties in person is particularly useful in the case of illiterate litigants. Much hardship to the people will be prevented, if the Presiding Officers examine the parties personally and sift the cases thoroughly at the outset.

10. Amendment of pleadings—The examination of the parties frequently discloses that the pleadings in the plaint or written statement are not correctly stated. In such cases, these should be ordered to be amended and the amendment initialled by the party concerned. If any mis-joinder or multifariousness is discovered the Court should take action to have the defect removed.

11. Forms prescribed for examination of parties—In order to ensure due compliance with these instructions as regards the examination of parties, the High Court has prescribed forms on which such examination should be recorded. Appellate Courts should see that the forms prescribed are used and should not fail to take notice of subordinate Courts which neglect to follow the directions here given.

12. (i) *Discovery and inspection etc.*—The provisions of Orders XI and XII of the Code with regard to ‘discovery and inspection’ and ‘admissions’ are very important for ascertaining precisely the cases of the parties and narrowing down the filed of controversy. A proper use of these provisions should save expense and time of the parties and shorten the duration of the trial. The parties should be warned that if they fail to avail themselves of these provisions they will not be allowed cost of proving facts and documents, notice of which could have been given. When hearing evidence the Court should made a note whether the parties have made use of these

provision, and if they have not done so, should ordinarily disallow costs incurred in proving such facts and little de-documents in passing final orders. As these provisions are little understood and are not used as much as they should be, it has been considered necessary to mention them briefly here.

(ii) *Court can move suo motu*—Section 30 of the Code authorises the Court when it appears reasonable, to other, *suo motu,* the delivery and answering of interrogatories, the admission of documents and facts and the discovery, inspection, production, etc., of documents or other articles producible as evidence. The power should be freely exercised in long and intricate case or where the number of documents relied upon by the parties is large and it may appear that a long time would be taken up in formally proving the facts and the documents.

(iii) *Interrogatories*—Rules 1 and 2 of Order XI deal with discovery interrogatories. Leave to deliver interrogatories should be given to such only of the interrogatories as the Court may consider necessary for disposing fairly of the suit or for saving costs. The party to whom interrogatories are delivered shall made answer by affidavit with the time prescribed in Order XI, Rule 8 and may therein raise objections as provided in Order XI, Rule 6. Interrogatories may also be set aside or struck off by the Court, if these are unreasonable or vexatious or are prolix, oppressive or scandalous (Order XI, Rule 7). The answer to the interrogatories may be objected to only on grounds of insufficiency (Order XI, Rule 10). When a party omits to answer or answers sufficiently, the Court may on the application of the other party, require the former to answer or answer further by affidavit, or by *viva* examination. (Order XI, Rule 11).

(iv) *Discovery of documents*—A party may also move the Court for discovery of documents which are or have been in possession or power of any other party to the suit, and which relate to any matter in question in the suit. The other party shall made answer on affidavit in Form 5, Appendix C to the Code and must made a full and complete disclosure along the lines indicated in this Form (Order XI, Rules 12 and 13). The production of documents can be resisted on three grounds; *viz.* (i) that these are evidence exclusively of the party's own case or title, (ii) that these are privileged; and (iii) when the party called upon to produce being a public officer considers, that a disclosure would be injurious to public interest. The affidavit shall be treated as conclusive to the existence, possession and the grounds of objection to the production of the document, unless the Court is reasonably certain that the objection is misconceived and the document is of such a nature that the party cannot properly make the assertions contained in the affidavit. The Court can also examine the documents to decide the claim about privilege. The Court can order the production of the documents at any stage of the trial and a party can serve notice on the other party for the inspection of any of the documents mentioned in the pleadings or the affidavit of the other party (Order XI, Rules 14 and 15). The failure to comply with such order or notice does not justify the striking out of the defence, though the party at fault shall not afterwards be at liberty to put such document in evidence, except with the leave of the Court and on such terms as to costs as the Court thinks fit. Section 163 and 164 of the Indian Evidence Act may also be read in this connection. The party on whom notice to produce or allow inspection is served, shall within ten days serve a counter notice, starting a time within three days after the delivery thereof offering inspection by the other party at his pleader's office, of such documents as he offers to produce (for forms of notices see No. 7 and 8, Appendix C). Where no such counter notice is given, the Court may on the application of the party and if of the opinion that it is necessary for

disposining fairly of the suit or for saving costs make an order for inspection at a time and place fixed by the Court.

(v) *Business Books*—In the case of business books the Court may in the first instance, instead of ordering inspection of original books, order that copies of relevant entries verified to be correct by the affidavit of a person who has seen these books, may be furnished. Such affidavit shall state whether in the original books there are any and what erasures, interlineations and alterations, etc. The Court can still order inspection of the original books, and can look up the document to decide a claim regarding privilege.

(vi) *Penalty for disobedience of order*—Under Rule 21 of Order XI, when a party disobeys valid orders of the Court to answer interrogatories or for discovery and inspection of documents he can, on the application of the other party, if a plaintiff have his suit dismissed for want of prosecution, and if a defendant have his defence, if any, struck out by the Court. The Courts should pass orders against a party only as a last resort and when the default is wilful [9](But before making an order on application for "non-compliance with order for discovery" the Court must (a) serve the notice to the party; and (b) provide an opportunity of being heard. After the order dismissing the suit under sub-rule (1) of Rule 21 of Order XI, is made the party is precluded from bringing a fresh suit on the same cause of action). This rule has been interpreted to be applicable only where an order passed under Rule 21 had remained uncomplied with and not where orders under Rules 1, 12 and 18 of Order XI were disobeyed.

13. Notice to admit documents or facts—(i) Order XII of the Code makes provisions for admission of facts and documents. Any party can serve on the other party a notice to admit facts of any document within fifteen days from the date of service of notice. Rule 2A newly inserted provides that documents are to be deemed to be admitted if not denied specifically or by necessary implication within a period of fifteen days from the date of service of notice unless the Court require any document so admitted to be provided otherwise than by such admissions. The person failing unreasonably to admit such document may be burdened with penal costs. Rule 3A now enables the Court to call upon any party to admit any document at any stage of the proceeding whether or not notice to admit the documents has been given. The failure or neglect of that other party to admit documents or facts entails only this penalty that the cost of proving the fact or the document has to be borne by that other party, whether be the final result of the suit. A notice to admit facts should be served at least nine days before the day fixed for hearing; the other party may then admit the fact within six days of service of notices otherwise he incurs liability for the costs of proving the fact.

(ii) *Part Judgment on Admissions*—Where a part of the case is admitted in the pleading whether orally or in writing, the Court may at any stage of the suit *suo motu* or on the application of the party may pass judgment or order in respect of the part admitted, and a decree is to be drawn accordingly.

14. Form of issue—When the pleadings have thus been exhausted and the Court has before it the plaint, pleas, written statements, admissions and denials recorded under Order **X,** Rule 1, examination of parties recorded under Order **X,** Rule 2, and admissions of facts or documents made under Order XII of the Code, it will be in a position to frame correctly the issues upon the

points actually in dispute between the parties. Each issue should state in an interrogative form one point in dispute. Every issue should form a single question, and as far as possible issue should not be put in alternative form. In other words, each issue should contain a definite proposition of fact or law which one party avers and the other denies. An issue in the form, so often seen, of a group of confused question is no issue at all, and is productive of nothing but confusion at the trial. A double or alternative issue generally indicates that the Court does not see clearly on which side or in what manner the true issue arises; and on whom the burden of proof should lie and an issue in general terms such as "Is the plaintiff entitled to a decree" is meaningless. If there are more defendants than one who make separate answers to the claim, the Court should not against each issue the defendant or defendants between whom and the plaintiff the issue arises.

15. Burden of proof—The burden of proof as to each issue should be carefully determined and the name of the party on whom the burden lies, stated opposite to the issue.

Part G
DOCUMENTARY EVIDENCE

1. Production of documents and list along with plaint and written statement on final hearing—The main provisions of the Code with regard to the production of documents by the parties are as follows—

(a) According to Order VII, Rule 14, when the plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and deliver the document itself or a copy thereof to be filled with the plaint. If he relies on any other documents, whether in his possession or power or not as evidence in support of his case he shall enter such documents in a list to be annexed to the plaint. If the documents are not so produced or entered in the list, they cannot be proved at a later stage without the leave of the Court, unless they fall within the exception given in sub-rule (2) of Order VII, Rule 18.

[10](b) Order VIII, Rule 1 which is drastically amended by CPC Amendment Act, 1976 and came into effect with effect from 1st February, 1977 makes it obligatory on the part of the defendant to file the written statements of his defence at or before the first hearing or within such time as the Court may permit. Where the defendant relied on any document whether or not in the possession or power in support of his defence or claim for set off or counter claim, he shall enter such documents in a list and attach the same along with the written statement. If a written statement is not presented, present the list to the Court at the first hearing of the suit. It is also obligatory on the part of the defendant to produce the document or a copy of the document which is in his possession or power along with the written statement on which he claims set-off or makes the counter-claim. If such documents on which he makes counter-claim or claims set-off is not in his possession or power, state particulars and the address in whose possession or power, they are. If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may deem fit, if he shows same good cause to the satisfaction of the Court for the non-entry of the document in the list or the written statement, and the Court while allowing such further period shall record its reasons for so doing. If the document which is ought

to be entered in the list, is not so entered, shall not without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(c) Order XIII, Rule 1, lays down that the parties shall produce at or before the settlement of issues all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been already filed, in Court and all documents which the Court has ordered to be produced. If the documents are not so produced at or before the settlement of issues they cannot be produced at a later stage unless good cause is shown to the satisfaction of the Court, also the Court shall record its reasons for allowing the production of the cross-examination of the witnesses of the other party and (b) merely to refresh the memory, need not be produced alongwith the statement.

2. (i) *List of documents and their comparison with the list*—Whenever any documents are produced by the parties in the course of a suit, whether with the plaint or, written statement, or a later stage, they must always be accompanied by a list in the form given below. Documents produced must be forthwith compared with the list, and if found correct, signed by the chief ministerial officer of the Court. In column 4, the Court should note the manner in which the document was dealt with, *i.e.*, whether it was admitted in evidence or rejected and returned to the party concerned or impounded, as the case may be.

List of documents by Plaintiff/Defendant under Order XIII, Rule 1, Civil Procedure Code

In the Court of…….at……District…..…….

Suit No……..of……..19……

…….*Plaintiff*

Versus

…….*Defendant*

List of documents produced with the plaint (or at first hearing) on behalf of plaintiff or defendant

This list was filed by this day of. . . . . 19. . . . . .

			What became of the document		
Serial No.	Description and date, if any, of the document	What the document is intended to prove	If brought on the record, the Exhibit mark put on the document	If rejected, date of return to the party and signature of party or pleader to whom the document was returned	Remarks
1	2	3	4(a)	4(b)	5

			Signature of party or pleader producing the list		

Note—Judicial officers should instruct all petition-writers practising in their Courts to prepare lists in the above form for all documents intended to be produced in Court.

[11][2(i)(a) The party filing any document whether in original or copy thereof shall supply a copy of the same to the other party.

(b) Whenever any document is ordered to be placed in a sealed cover, photocopy thereof shall be kept on record.]

(ii) *Preservation of documents*—Care should be taken to protect old and delicate documents from damage likely to be caused by frequent handling in Courts. The common method of pasting the document on a piece of strong paper will be found useful in most cases but where there is writing on both the sides, the document may be preserved between two sheets of cellophane glued together at the edges so that the document can be easily examined without being taken out of its protective covering. In case the parties agree a photographic copy may also be placed on the file and the document kept in a sealed cover. The party producing the document may be asked to supply the material necessary for its proper preservation.

3. Calling upon parties to produce documents—The Court should formally call upon the parties at the first hearing at the time of framing issues to produce their documents and should make a note that it has done so. Forms have been prescribed by the High Court for the examination of the parties with reference to their documents and these should be invariably used. If the printed forms are not at any time available, the questions prescribed therein should be asked and the questions as well as the answers noted. If these instructions are strictly carried out, there will be no justification for the plea frequently put forward by ignorant litigants, with regard to the late production of a document that they had brought the document at the first hearing but were not called upon to produce it.

4. Late production of documents—The above provisions as regards the production of the documents at the initial stage of a suit are intended to minimize the chances of fabrication of documentary evidence during the course of the suit as well as to give the earliest possible notice to each party of the documentary evidence relied upon by the opposite party. These provisions should, therefore, be strictly observed, and if any document is tendered at a later stage, the Court should consider carefully the nature of the document sought to be produced *(e.g.*, whether there is any suspicion about its genuineness or not) and the reasons given for its non-production at the

proper stage, before admitting it. The fact of a document being in possession of a servant or agent of a party on whose behalf it is tendered is not itself a sufficient reason for allowing the document to be produced after the time prescribed by Order XIII, Rule 1. The Court must always record its reasons for admission of the document in such cases, if it decides to admit it (Order XIII, Rule 2).

5. Forged or Defective documents—Should any document which has been partially erased or interlined or which otherwise presents a suspicious appearance, be presented at any time in the course of proceedings, a note should be made of the fact, and, should a well-founded suspicion of fraudulent alteration or forgery subsequently arise, the document should be impounded under Order XIII, Rule 8, and action taken under Section 340 of the Code of Criminal Procedure. Similarly, should any document be presented which 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. Where a document produced is written in pencil the Court should ask for a true copy thereof written in ink.

6. Production and admission of documents distinguished—Courts should be careful to distinguish between mere production of documents and their 'admission in evidence' after being either 'admitted' by the opposite party or 'Proved' accordingly to law. When documents are 'produced' by the parties, they are only temporarily placed on the record subject to their being 'admitted in evidence' in due course. Only documents which are duly 'admitted in evidence' form a part of the record, while the rest must be, returned to the parties producing them (Order XIII, Rule 7).

7. Documents must be tendered in evidence—Every document which a party intends to use as evidence against his opponent must be formally tendered by him in evidence in the course of proving his case. If a document has been placed on the record, it can be referred to for the purpose. If it is not on the record, it must be called from the produced by the person in whose custody it is.

8. Procedure when documents admitted by the opposite party—If the opponent does not object to the document being admitted in evidence, an endorsement to that effect must be made by the Judge with his own hand; and if the document is not such as is forbidden by the Legislature to be used as evidence, the Judge will admit it, cause it or so much of it as the parties may desire to be read.

9. Procedure when document is not admitted by the opposite party—If, on the document being tendered, the opposite party object to its being admitted in evidence two questions commonly arise, first whether the document is authentic, or in other words, is that which the party tendering it represents it to be; and second, whether, supposing it to be authentic it is legally admissible in evidence as against the party who is sought to be affected by it. The latter question in general, is a matter of argument only; but the first must, as a rule, be supported by such testimony as the party can adduce.

10. Legal objections as to admissibility—All legal objections as to the admissibility of a document should, as far as possible, be promptly disposed of, and the Court should carefully note the objection raised and the decision thereon.

The Court is also bound to consider, *suo motu*, whether any document sought to be proved is relevant and whether there is any legal objection to its admissibility. There are certain classes of documents which are wholly inadmissible in evidence for certain purpose owing to defects such as want of registration, etc. There are others in which the defect can be cured, *e.g.*, by payment of penalty in the case of certain unstamped or insufficiently stamped documents.

COMMENTS

The question of admissibility of the document has to be decided at the stage when the document is formally tendered in evidence and proved. Deferring a decision on the question of admissibility of the document and making it part of the evidence by marking exhibit mark on it may lead to complication and in many cases result in grave injustice to the party, who tenders the document. If the question of admissibility of the document is deferred to be decided at the time of hearing of final arguments in many cases a party may be deprived of an opportunity to cure a curable defect or supply the deficiency. It is for this very reason that the High Court rules and order discussed above lay emphasis on prompt disposal of the objection raised to the admissibility of the document and mode of proof. It may work great injustice in some cases if left undecided till the arguments are heard for disposal of the suit. The objection to the admissibility and the proof of the document should ordinarily be not kept pending and this should be decided promptly as and when they are raised, particularly if raised during the recording of the evidence of a witness who is called to prove it. But the objection certainly be disposed of before the date is fixed for hearing of final arguments. The view taken by this Court finds support from the judgment of a Division Bench of this Court reported as *Sunder Bala and Another* vs. *Sandeep Foam Industries Pvt. Ltd.,* 85(2000) DLT 478: *Smt. Shail Kumari* v. *Smt. Saraswati Devi,* 2002 (96) DLT 131 : 2002 RLR 249.

In *Javer Chand and Others* v. *Pukhraj Surana,* AIR 1961 SC 1655. The Apex Court was dealing with a question raised as to the admissibility of document on the ground that it has not been stamped or has not been properly stamped and the impact of Section 36 of Stamp Act. It was observed:

"…..Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped it has to be decided then and there when the document is tendered in evidence. Once the Court rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case..... It is not, therefore, one of those cases where a document has been inadvertently admitted, without the Court applying its mind to the question of its admissibility . Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or Revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction." *Smt. Shail Kumari* v. *Smt. Saraswati Devi,* 2002 (96) DLT 131 : 2002 RLR 249.

There are two stages relating to documents. One is the stage when all documents on which the parties rely are filed by them in Court. The next stage is when the documents are proved and finally tendered in evidence. It is at this later stage that the Court has to decide whether they should be admitted or rejected. If they are admitted and proved then the seal of the Court is put on them giving certain details laid down by law, otherwise the documents are returned to the party who produced them with an endorsement thereon to that effect. (*Baldeo Sahai* v. *Ram Chander & Others,* AIR 1931 Lahore 546 relied on). *Smt. Shail Kumari* v. *Smt. Saraswati Devi* 2002 (96) DLT 131 : 2002 RLR 249.

11. Mode of Proof—As regards the mode of proof the provisions of the Indian Evidence Act should be carefully borne in mind. The general rule is that document should be proved by primary evidence, *i.e.*, the document itself should be produced in original and proved. If secondary evidence is permitted, the Court should see that the conditions under which such evidence can be let in, exist.

If an old document is sought to be proved under Section 90, the Court should satisfy itself by every reasonable means that it comes from proper custody.

Under the Banker's Books Evidence Act, 1891, certified copies can be produced, instead of the original entries, in the books of Banks in certain circumstances. In view of Section 2(8) of this Act the following certificate should appear at the foot of such copies:

"Certified that the above is a true copy of an entry contained in one of the ordinary books of the bank and that it was made in the usual and ordinary course of business and that such book is still in the custody of the bank.

Dated..... ..... Signature

Principal Accountant/Manager,

..... Bank,

..... Station."

A similar privilege is extended under Section 26 of the Co-operative Societies Act, 1912, to entries in books of Societies registered under that Act and the entries in the accounts prescribed under clause (a) of Section 3(1) of the Punjab Regulation of Accounts Act, 1930.

12. Proof of signature or attestation—There are certain points which the Courts should bear in mind, when the signature or attestation of a document is sought to be proved.

Before a witness is allowed to identify a document, he should ordinarily be made, by proper questioning, to state the grounds of his knowledge with regard to it. For instance, if he is about to speak to the act of signature, he should first be made to explain concisely the occurrences which led to his being present when the document was signed, and if he is about to recognise a signature on the strength of his knowledge of the supposed signer's handwriting he should first be made to state the mode in which this knowledge was acquired. This should be done by the party who seeks to prove the document. It is the duty of the Court, in the event of a witness professing ability to recognise or identify handwriting, always to take care that his capacity to do so is thus tested, unless the opposite party admit it.

13. Plans—In all cases in which a plan of the property is produced by either of the parties or is required from it by the Court and is not admitted by the opposite party, it must be properly proved by—

(a) examination of the person who prepared it and by requiring him to certify it as correct and to sign it, or

(b) by affidavits or examination of the parties and witnesses.

It is further open to the Court to issue a commission at the cost of the parties or either of them to any competent person to prepare a correct plan and to examine the person so appointed in order to explain and prove it.

14. Endorsements on documents admitted in evidence—Every document 'admitted in evidence' must be endorsed and signed or initialled by the Judge in the manner required by Order XIII, Rule 4 and marked with an Exhibit number. Documents produced by the plaintiff may be conveniently marked as Ex. P. 1, Ex. P. 2, etc., while those produced by the defendant as Ex. D. 1, D. 2, D. 3, etc. To ensure strict compliance with the provisions or Order XIII, Rule 4 (. . . . .the importance of which has been emphasized by their Lordships of the Privy Council, on more than one occasion each Civil Court has been supplied with a rubber stamp in the following form :

Suit No. ……..of……19 …….

Title……Plaintiff……*Versus*……Defendant

Produced by……

On the……day of……19……

Nature of document……...

Stamp duty paid Rs. ……is (is not) correct.

Admitted as Exhibit No…….

On the……day of……19……

Judge

The entries in the above form should be filled in at the time when the document is admitted in evidence under the signature of the Judge. This precaution is necessary to prevent any substitution or tampering with the document. Details as to the nature of the document and the stamp duty paid upon it are required to be entered in order that Courts may not neglect the duties imposed on them by Section 33 of the Indian Stamp Act, 1899. District Judges should see that all Courts subordinate to them are supplied with these stamps.

The above rule also applies to documents produced during the course of an enquiry made on remand by an appellate Court.

The endorsement and stamp will show that the document is proved. It is to be remembered that the word "proved" used in the context here means "that judicial evidence has been led about it", and does not imply "proof" in an absolute sense.

15. Endorsements on documents not admitted in evidence—Documents which are not admitted in evidence must similarly be endorsed before their return with the particulars specified in Order XIII, Rule 6, together with a statement of their being rejected and the endorsement must be signed or initialled by the Judge.

16. Documents to be placed in strong cover—Documents which are admitted in evidence should be placed in strong covers.....……..
one cover being used for documents produced by the plaintiff and the other for those produced by the defendant.

17. Consequences of not properly admitting documents—Owing to the neglect of the foregoing directions as regards endorsing and stamping of documents it is often impossible to say what papers on the file constitute the true record; copies of extracts from public or private records or accounts referred to in the judgment as admitted in evidence, are often found to be not "proved" according to law, and sometimes altogether absent.

18. Revision of record before writing judgment to see that only admitted documents are on the record—It is the duty of the Court, before hearing arguments, finally to revise the record which is to form the basis of its judgment, and to see that contains all that has been formally admitted in evidence and nothing else. Any papers still found with the file, which have not been admitted in evidence, should be returned to the parties.

Appellate Courts should examine the records of cases coming before them on appeal with a view to satisfying themselves that subordinate Courts have complied with the provisions of the law and instructions of the High Court on the subject, and should take serious notice of the matter when it appears that any Court has failed to do so.

19. Extracts or copies of settlement record and Riwaj-i-Am to be placed on record—It frequently happens that although the *wajib-ul-arz or riwaj-i-am* of a village or other revenue record is referred to by the parties and by the Court itself as affording most important evidence, there is no certified extract or copy with the record of the entries relied on. When there is a copy, it is often incomplete or so carelessly written as to be unintelligible. It becomes necessary to call for the originals thus causing damage to the records themselves, and delay and inconvenience to the parties to the suit. It is the duty of Appellate Courts to see that the Courts subordinate to them have proper extracts or copies of relevant entries in Settlement records made, verified and placed on the record.

20. Production of public records and records of former Indian States—On application for the production of a Court record should be entertained unless it is supported by an affidavit and the Court is satisfied that the production of the original record is necessary (Order XIII, Rule 10). The same principle may well be applied to other public records also.

It should be borne in mind that the mere production of a record does not make the documents therein admissible in evidence. The documents must be proved at the trial according to law.

Requisition for records of Courts in other States, including the former Indian States which have now merged with the States or integrated as states or territories of the Indian Union should be submitted through the Registrar High Court.

Care should, however, be taken in not treating the applications for production of public records and documents too lightly. Such documents are liable to be lost or mutilated in the course of transmission and a good deal of time of the clerks is wasted in checking these records in order to see whether they are complete according to the index. Original records or documents should, therefore, not be sent for unless the Court is fully satisfied that the production of a certified copy will not serve the purpose.

Attention is drawn to Rule 5, Order XIII, Civil Procedure Code, under which it is open to the Court to require copy of an entry of a public record to be furnished by one or the other party to the case. In the absence of special reasons which should be recorded in writing, Court should not detain the original of a public document but should return it after a copy has been furnished.

21. Return of documents—Documents admitted in evidence can be returned to the persons producing them, subject to the provisions of Order XIII, Rule 9 (as amended by the High Court by Notification No. 563-G, dated the 24th November, 1927). If an application is made for return of a document produced in evidence before the expiry of the period for filing an appeal or before the disposal of the appeal (if one is filed) care should be taken to require a certified copy to be placed on the record, and to take an undertaking for the production of the original, if required.

In pending cases, application for return of documents should be made to the Court where the case is pending.

In decided cases, the officer-in-charge of the Record Room should return the documents without consulting the original Court only when the applicant delivers a certified copy to be substituted for the original and undertakes to produce the original if required to do so.

In all other cases, application shall be made to the original Court or its successor. If the Court considers that the document may, under Order XIII, Rule 9, be returned, it shall record an order accordingly.

The application should then be presented to the officer-in-charge of the Record Room who will pass an order for return of the document.

Part H
HEARING OF SUITS, ADJOURNMENTS, EXAMINATION OF WITNESSES, ETC.

1. List of witnesses—Notice of the day of trial, reasonably sufficient to enable the parties to attend with their witnesses, should be given before hand. It is the business of the parties to take all reasonable steps to have their witnesses present in Court on the day fixed. The Court should,

on application and deposit of process-fees and other necessary expenses, issue the requisite summonses as soon as possible so as to secure their attendance on the date fixed for hearing.

A list of witnesses must be filed by a party in Court before the actual commencement of the hearing of the evidence on his behalf, and no party who has begun to call his witnesses shall be entitled to obtain processes to enforce the attendance of any witness against whom process has not been previously issued or to produce any witness not named in the list without an order of the Court made in writing and stating the reasons therefor (Order XVI, Rule 1, as amended by the High Court).

2. Statement of case—The trial should begin by the party having the right to begin (Order XVIII, Rule 2, of the Code) stating his case, and giving the substance of the facts which he proposes to establish by his evidence. The case thus stated ought to be reasonably in accord with the party's pleadings, because no litigant can be allowed to make at the trial a case materially and substantially different from that which he has placed on record, and which his adversary is prepared to meet. The procedure laid down in the aforesaid rule is often neglected by Courts, but it is highly useful and should be invariably followed.

3. Examination-in-chief—In the examination of witnesses questions ought not to be put in a leading form, nor in such a form as to induce a witness, other than an expert, to state a conclusion of his reasoning, an impression of fact, or a matter of belief. The question should be directed to elicit from him facts which he actually saw, heard or perceived within the meaning of Section 60 of the Indian Evidence Act. The questions should be simple, should be put one by one and should be framed so as to elicit from the witness, as nearly as may be in chronological order, all the material facts to which he can speak of his own personal knowledge. A general request to a witness to tell what he knows or to state the facts of the case, should, as a rule, not be allowed, because it gives an opening for a prepared story. Where the party calling witnesses is not aided by counsel, and is unable himself to properly examine his witnesses he may be asked to suggest questions and the examination may be conducted by the Court.

4. Cross-examination—When the examination-in-chief is concluded the opposite side should be allowed to cross-examine the writing or, if unable to do so, to suggest questions to be put by the Court. In cross-examination leading questions are permissible.

5. Re-examination—Then should follow, if necessary, re-examination for the purpose of enabling the witness to explain answers which he may have imperfectly given on cross-examination, and to add such further facts as may be admissible for the purpose.

6. (a) *How far should Court interfere in the conduct of examination*—When the examination, cross-examination and re-examination are conducted by the parties or by their pleader, the Presiding Officer ought not, as a general rule, to interfere, except when necessary, *e.g.*, for the purpose of causing questions to be put in a clear and proper shape, of checking improper questions, and of making the witness give precise answers. At the end, however, if these have been reasonably well-conducted he ought to know fairly well the exact position of the witness with regard to the material facts of the case; and he should then put any questions to the witness

that he thinks necessary. The examination, cross-examination, re-examination and examination by the Court (if any) should be indicated by marginal notes on the record.

(b) *Conduct of proceedings by lawyer's by clerks*—Complaints have been received that the Civil Courts sometimes allow Clerks of lawyers to appear, examine or cross-examine witnesses or to conduct the proceedings in other manners when the lawyers themselves are otherwise engaged. This is highly irregular and is against law and District Judges should take steps to put a stop to this practice wherever it is known to prevail.

7. Examination of witnesses called by Court—The examination of witnesses called by the Court under the provisions of Order XVI, Rules 7 and 14, of the Code, should always be conducted by the Court itself; and after such examination if the parties to the suit desire it, the witnesses may be cross-examined, by the parties. Upon the close of the cross-examination, the re-examination of such witnesses, if necessary, should be conducted by the Court in the manner above stated.

8. Deposition should be read over—The deposition of each witness should be read over to him in open Court and corrected, if necessary, as soon as his evidence has been finished (Order XVIII, Rule 5).

9. Mode of recording evidence—In all appealable cases the evidence shall be taken by or in the presence of the Judge or under his personal directions and supervision. If he does not write the evidence himself he shall (in all cases whether appealable or non-appealable) as the examination of each witness proceedings, make in his own hand a memorandum of the evidence. He shall sign this memorandum and file it with the record. Should he be unable to do so he shall cause the reason of his inability to be recorded, and the memorandum to be taken down in writing from his dictation in open Court.

10. Arguments—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 all the documents tendered by him have been either received in evidence or refused, it then devolves upon each of the opposing parties, who have distinct cases to state their respective cases in succession, should they desire to do so. After all of them have done so, or have declined to exercise the right, the evidence, whether oral or documentary, adduced by each in order, should be dealt with precisely as in the case of the first party; and on its termination and after they have, if they so desire, addressed the Court generally on the whole case the first party should be allowed to comment in reply upon his opponent's evidence.

11. Rebuttal evidence—If, however, the case of an opposing party is such as to introduce into the trial, matter which is foreign to and outside the case of the first party and the evidence adduced by him, then the latter must be allowed, if he so desires, to rebut this by additional evidence, and his opponent must be allowed to speak upon it by way of reply before the first party himself makes his own reply. But this is not to be understood as entitling the first party to ask for an adjournment for that purpose. He is bound to be prepared with such rebutting evidence, and an adjournment should only be allowed by the Court for good and sufficient reasons, costs being, if necessary, allowed to the opposite party.

12. Examination of parties as witnesses—The vicious practice of each party summoning his opponent as a witness merely with the design that counsel for each party gets a chance of cross-examining his client, obtains in many of the Muffasil Courts. This practice has been strongly condemned by their Lordships of the Privy Council and must cease. On the other hand, when the parties are personally acquainted with any facts which they have to prove, they are expected to go into the witness-box and stand the test of cross-examination by the opposite party. The failure of a party to go into the witness-box in such circumstances may, in the absence of a satisfactory explanation, justify the Court in drawing an interference which is unfavourable to that party (Order XVIII, Rule 4).

13. Note about closing of evidence—It is frequently urged in appeals that a party has had witnesses in attendance whom the lower Court has omitted to examine. It is often impossible to ascertain from the record whether this is the case, and it would be equally impossible to ascertain it by a remand. When the examination of the last witness produced a Court by a party is closed, he should be distinctly asked if he has any more witnesses to produce; and the question and reply should be noted on the record. If more witnesses are named, the Court should either examine them or record its reasons for not doing so. If either party states that he desires additional witnesses to be summoned the Court should record the fact of the application and pass an order thereupon.

14. Continuous hearing of evidence—Judges should always endeavour to hear the evidence on the date fixed, as much expense and inconvenience is caused by postponements ordered on insufficient grounds before the witnesses in attendance have been heard. Under Order XVII, Rule 1 of the Code when the hearing of the evidence has once begun the hearing of the suit should be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

It should be noted that Rule 1 of Order XVII as amended by this Court requires that when sufficient cause is not shown for an adjournment the Court shall proceed with the suit forthwith.

15. Adjournments for evidence—It has been observed that a number of Courts grant an adjournment merely because the party at fault is prepared to pay the costs of adjournment. Subordinate Courts should bear in mind that the offer of payment of the costs of adjournment is not in itself a sufficient ground for adjournment. The provisions of Order XVII, Rule 3 (as substituted by C.P.C. Amendment Act No. 104 of 1976), also deserve notice in this connection. If a party to a suit to whom time has been granted for a specific purpose as contemplated by Order XVII, Rule 3, Civil Procedure Code, fails to perform the act or acts for which time was granted without any good cause the rule gives the Court discretion to proceed to decide the suit "forthwith," *i.e.,* without granting any adjournment. In such cases a further adjournment should not ordinarily be granted, merely because offer is made for payment of costs. In some Courts, it is apparently assumed that if such an adjournment is not granted the case will be remanded by an Appellate Court. There are, however, no valid grounds for this assumption. If the record makes it clear that a further adjournment has been refused because of the negligence of the party concerned, such refusal would not in itself justify an Appellate Court in remanding the case. An

adjournment granted otherwise than on full and sufficient grounds is a favour in Civil suits favour can be shown to one party only at the expense of the other.

No hard and fast rule can, however, be laid down. Each case must be judged on its merits.

16. Adjournments for arguments—The practice of adjourning a case for arguments alter all the evidence has been given should, as a rule, not be followed except in long and complicated cases. But this observation does not extend to an adjournment when reasonably necessary, for a reply on the whole case by the party who is entitled to such reply nor to an adjournment for argument on a question of law which may have arisen during the trial and may have been, for convenience sake, reserved for argument until after the taking of the evidence. Whenever a case has to be adjourned for arguments it should be adjourned to the next day, or, if this is not possible, to a very near date.

17. Memo of evidence should be legible—The Judge's memoranda of evidence should always be written in a legible manner; and if from any cause they have been illegibly or indistinctly recorded, copies should be made and placed with the record.

18. Interlocutory order and notes—All orders made by the Court relative to change of parties, or adjournments, or bearing upon the course of the hearing of the suit other than depositions, orders, deciding any issue and the final judgment, and notes of all material facts and occurrences which may have happened during the hearing of the suit, such as the presence of witnesses, etc., must be carefully recorded from time to time by the Presiding Officer in his own handwriting and be dated and appended to the record. Each "order" or "note" should be clearly marked as such.

The practice prevails in the subordinate Courts of writing orders on the back of applications made by the parties during the trial of a case. Such orders may sometimes escape notice during the hearing of appeals. It is, therefore, desirable that the summary of all interlocutory orders should be recorded separately by the reader at one place in chronological order and kept at the beginning of the English record of evidence.

Part J
DISMISSALS IN DEFAULT AND *EX PARTE* PROCEEDINGS

1. General—Order IX of the Code deals with the appearance of parties and the consequences of non-appearance on the first hearing. Order XVII, Rule 2, lays down that the non-appearance of a party on an adjourned hearing may lead to similar consequences.

2. Default by parties—Order IX, Rule 3, provides that when neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

3. Default by defendants—(a) Order IX, Rule 5, provides that, if on the day fixed in summons for the defendant to appear, and answer, the plaintiff appears and the defendant does not appear, and it is proved that the summons was duly served in sufficient time to enable the defendant to

appear and, answer on the day named in the summons, the Court may proceed to try the case *ex parte.* Even in such cases, however, the plaintiff must prove this case to the satisfaction of the Court, before he can obtain a decree. The defendant, it will be observed, may apply under Order IX, Rule 13, for an order to set aside the *ex parte* judgment at any period between the date of the judgment and the thirtieth day from the date of the decree or where the summons was not duly served, from the date on which he has knowledge of the decree *{See* Article 123, Schedule 1, of the Indian Limitation Act). The provisions of Section 5 of the Indian Limitation Act, 1963, have recently been made applicable to all applications for the setting aside *of ex parte decrees* and for restoration of suits under Order 9, Rules 4 and 9. These applications may, therefore, be admitted even after the period of thirty days if the applicant satisfies the Court that he had sufficient cause for not making the application within such period. If he satisfies the Court that the summons was not "duly served", or that he was prevented by sufficient "cause" from appearing when the suit was called for hearing, the Court should set aside the order on such terms as to costs or otherwise as it may deem fit.

(b) Attention is drawn to Order IX, Rule 7, which lays down the procedure for setting aside *ex parte* proceeding when the hearing of the suit has been adjourned *ex parte* but no *ex parte* decree has been passed.

4. Default by plaintiff—Order IX, Rule 8, lays down that if the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order dismissing the suit, unless the claim is admitted wholly or in part, in which case the claim shall be decreed only to the extent to which it is admitted.

5. Hasty dismissal not advisable—The above rules must be worked in a reasonable manner, otherwise they will result in a number of application for setting aside orders passed in the absence of one or both parties. It is possible that a party may have temporarily gone away to call his counsel or to refresh himself and a person cannot be expected to be in constant attendance throughout the day. The Court should to avoid hardship, lay aside the case where any party does not appear when the case is called. The case may be called again, later in the day after the other work has been finished or when both the parties turn up and the Court can conveniently take up the case that had been laid down. If these rules are worked in a reasonable manner applications for restoration of suits or setting aside of *ex parte* orders would be reduced in number. Such applications generally lead to delay in the disposal of cases and waste a good deal of the time of the Courts and the litigants.

6. Hasty dismissal not advisable—The tendency to dismiss cases in default or to pass *ex parte* orders in a hasty manner in order to show an increased outturn is to be strongly depreciated and is not to be resorted to in any case. The Presiding Officers should note down the time in their own hand when a case is dismissed in default or an oder to proceed *ex parte* is passed.

COMMENTS

A case should not be dismissed earlier in the day for default of appearance. *Kamlawati* v. *Shambhu Nath & Sons,* 1976 Raj. L.R. (N) 96.

7. Order of "Dakhil Daftar" is irregular—There is a tendency for Presiding Officers of Civil Courts to pass orders that cases should be "dakhil daftar". This practice is incorrect. A Presiding

Officer should invariably make it clear what the precise nature of the order is, *i.e.*, whether the case is postponed or dismissed and the rule, if any, under which the order is passed should also be mentioned.

8. Registration of suits—When a plaint is presented a suit is thereby instituted under Order IV, Rule 1, of the Code and the suit must forthwith be entered in the Register of Civil Suits (Civil Register No. 1) in accordance with Order IV, Rule 2.

9. Procedure when plaintiff is not present on the preliminary date—It is customary, when a plaint is presented, to fix a short preliminary date in order to permit the examination of the plaint. On this preliminary date the plaintiff is expected to appear to receive notice of the date fixed for the hearing of the suit. It sometimes happens that the plaintiff does not appear on this date and several cases have come to the notice of the Judges in which Courts have forthwith dismissed the suit in default by orders purporting to be made under Order IX.

This procedure is incorrect as it has been held that the preliminary date is not a date fixed for hearing and therefore, the provisions of Order IX do not apply. The correct procedure in such cases may be deduced from the Code and has been referred to in several rulings of the High Court. It is as follows:

(i) If the plaint is in order and process fee for the summoning of the defendant has been filed with the plaint, the Court should issue summons to the defendant and a notice to the plaintiff to appear on the date for which the defendant is summoned. If one that date the plaintiff does not appear in spite of the service of the notice on him, the suit can be dismissed under Order IX, Rule 3 or Rule 8 of the Code whichever is applicable.

(ii) If the plaint is in order but process fee has not been filed with it, the Court should fix a date for the appearance of the defendant and issue notice to the plaintiff calling upon him to appear on that date to deposit process fee by a specified date so that the defendant may be summoned. If on the date fixed it is found that no summons has issued owing to non-payment of process, fees, or that the summons could not be served owing to late payment of process fees, the suit can be dismissed under Order IX, Rule 2. If process fee has been paid as directed, the other provisions of Order IX, will apply.

(iii) If the plaint is not in order and the defects are such as to entail its rejection under Order VII, Rule 11, the Court should record an order rejecting it. If it is to be rejected for failure to pay Court-fees, it will be necessary first to issue a notice calling on the plaintiff to make up the deficiency unless he has already been given time to do so in such cases the final order to be entered in Civil Register No. 1 is ‘plaint rejected’.

If the defects in the plaint are not such as to call for its rejection under Order VII, Rule 11, the Court should proceed in accordance with the procedure outlined in sub-clauses (i) and (ii) above the question of remedying the defects being taken up at the first hearing.

Part K
SPEEDY DISPOSAL OF CASES

1. Cause-diary—The speedy disposal of Court business is a matter which requires the earnest attention of every judicial, officer. Delays of law are notorious in this country and tardy justice is often no better than injustice.

The proper despatch of Court work depends not merely on the ability of an officer, but also to a large extension the personal attention paid by him to its adjustment and control. Amongst the important matters, which should receive his personal attention is the cause-diary. The practice of leaving the fixing of dates to the clerical staff, lends to abuses and results frequently in confusion of work. The fixing of an adequate cause list which can be got through without difficulty during the Court hours, requires some intelligence and forethought, and unless the officer pays personal attention to the matter and fixes the list with due regard to the time likely to be taken over each case, there is risk of a considerable number of cases being postponed from time to time with consequent delay in their disposal and inconvenience to the litigant public.

District Judges should from time to time examine the diaries of Subordinate Judges in their districts in order to see that too much or too little work is not fixed, for any day. A sufficient number of cases should, however, be fixed for hearing, so that even if, some cases collapse there would be sufficient work to keep the Judge fully occupied throughout the day.

2. Causes of delay in disposal of case—As a result of annual inspections, it has been found that delay in the disposal of cases is mainly due to the following errors.

(i) Orders for the issue of notice to parties and summonses to witnesses are given without specifying the date by which process-fees must be paid into Court. Two days should be the usual time allowed.

(ii) On failure of service, orders for the issue of fresh process are given without ascertaining the cause of the failure of the service and fixing the responsibility therefor.

(iii) Documents, instead of being accepted either with the plaint or at the first hearing, are accepted at every stage of the case.

(iv) Applications for the issue of interrogatories, which should be accepted at the earliest stage of the case only, are accepted at a very late stage.

(v) Witnesses, who are present in Court are often sent away unexamined on all kinds of inadequate pretexts.

(vi) Cases are not proceeded with from day to day and evidence is taken in driblets.

(vii) Adjournments are granted for the preparation of arguments at all stages even in the matter of interlocutory order.

(viii) Unnecessary long adjournments are granted, when adjourn-ments are unavoidable.

(ix) Suits are dismissed or restored without adequate reasons.

(x) Orders are written by the Reader instead the Presiding Officer.

(xi) Personal attention is not paid to service of processes.

(xii) The adjournment on insufficient grounds on cases which have already become old.

(xiii) Fixing a large number of cases for a particular day and then postponing some of them for want of time.

(xiv) Delay in the disposal of appeals against preliminary decrees, etc.

Of all the foregoing, the most serious causes of delay are errors (i) and (ii).

All orders of whatever nature which are passed after the admission of a plant except those of a purely routine character should be written by the Presiding Officer himself.

A Court should not adjourn any case for more than three months. If for any reason the diary for the next three months is full, a request for the transfer of some cases to some other Court should be made to the District Judge.

Intermediate dates should be fixed to watch the return of files requisitioned from other Courts and States.

3. Commission and arbitrations—Delays also occur frequently in cases in which a commission has been issued of reference made to arbitration. Courts should insist on submission of reports and awards by the Commission or Arbitrators, as the case may be, within a reasonable time and should grant adjournments without satisfying themselves that the Commissioners or Arbitrators are doing their duties and that sufficient cause has been shown for the grant of an adjournment. Parties and arbitrators should be made to understand that a reference to arbitration is liable to be cancelled if the award is not filed within time. It will be found useful to make a part of the Commissioner's fees depend upon punctual submission of his report, and to made this fact clear in the Court's order and the letters of request to the Commissioner.

[12][4. **********]

5. Transfers—Whenever cases are transferred from one Court to another, the instructions contained in Chapter 13 of this Volume should be followed *(Also see* Section 24 C.P.C.)

6. Cases held up owing to records being in the appellate Court or pending decision of another case—Efforts should be made to give priority to cases for the decision of which other cases are held up. Subordinate Judges are authorised to bring to notice of appellate Courts cases where a suit has already been postponed for more than 3 months merely because the records

happen to be with the appellate Court. The Presiding Officer of the Appellate Court should then treat the appeals in which records have been sent for by the lower Courts as "urgent" and dispose of them as early as possible. Appellate Courts should also treat all appeals in which proceedings have been stayed in a lower Court as "urgent".

7. Interlocutory orders—Applications for interlocutory orders, the admission of which will hold up the original proceedings, should be carefully scrutinized and promptly disposed of.

8. Old cases and abstracts of order sheets—All Civil Courts are required to furnish to the High Court a statement of civil cases pending over two years every month before 10th of the following month in the proforma appended below together with their explanation where necessary and the comments of the Session Judge concerned thereon. The proceedings of monthly meeting of Judicial Officers should accompany the aforesaid statement.

PROFORMA

Consolidated Statement of more than two years old civil cases pending in the Court of Subordinate Judge of.....District for the month of.....

Name of the Court	Name of Civil Cases	No. of cases which pending at the end of last month	No. of cases become over two years old during the month	Total No. of cases	No. of cases disposed of during the month	Balances	No. of stayed cases

1. Civil Appeals 2. Civil Suits

3. Rent Act Cases 4. Execution Cases

9. Priority to certain cases—Attention is invited to the instructions as regards the speedy disposal of cases in which Government servants, military officers, soldiers, etc., are involved or to which the Government is a party.

Cases under Section 28 of the Sikh Gurdwaras Act, 1925, should also receive priority and the disposed of as quickly as possible *(Vide* Circular Memo. No. 3823-G, dated the 20th May, 1927).

10. Commercial cases—"Commercial Cases" should be disposed of as speedily as practicable. The term "Commercial Case" is taken to include cases arising out of the ordinary transactions of merchants, bankers and traders; amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency, mercantile usage, and infringements of trade marks and passing off actions and debts arising out of such transactions.

In the early stages of the trail or appeal the Court should, either on its own motion or on the application of either party mark a case as a 'Commercial Case', if it appears to the Court to justify that classification.

All cases which have been marked as "Commercial Cases" under the preceding paragraph shall be brought to a hearing as early as may be practicable. Such cases shall be given priority on the day of hearing over other cases, except part-heard cases, and shall, so far as possible, be heard from day to day until they are finally decided.

[13]**11. Compromises**—Order XXIII, Rule 8 of Civil Procedure Code relating to "Compromises of suits" has suffered amendments by C.P.C. (Amendment) Act, 104 of 1976 and by inclusion of two provisions by the Punjab and Haryana High Court. Now Court must ensure under Order 23, Rule 3 that (a) there has been an agreement or compromise between the parties; (b) such an agreement or compromise is in writing and signed by the parties; and (c) such an agreement or compromise is valid in the eye of law. The dispute about a compromise or adjustment the parties negotiations for the same should not, as far as possible, be allowed to hold up the trial of the issues on merits and witnesses in attendance should not ordinarily be sent back unexamined. When the case cannot be proceeded with as indicated, the reasons should be recorded in writing. The judgment in the suit should not, however, be announced until the question of adjustment or satisfaction has been decided.

Decree in accordance with the agreement or compromise is to be passed whether or not the subject matter of the agreement or compromise or satisfaction is identical with the subject-matter of the suit. In representative suits, Courts permission to enter into compromise must be obtained. (Order 23, Rule 3B newly inserted.)

Part L
INCIDENTAL PROCEEDINGS

(a) Attachment before judgment and temporary injunctions

1. Attachment or arrest before judgment—If at the time of filing the plaint, or at and other stage of the suit, an application is made by the plaintiff, under Order XXXVIII of the Code, for the arrest of the defendant or for the attachment of his property before judgment, the Court should proceed to consider the application with reference to the provisions of the Code and the following instruction.

2. Attachment or arrest before judgment—Orders for arrest or attachment before judgment ought not to be made on insufficient grounds. The circumstances which justify a Court in passing an order of this nature are distinctly stated in Order XXXVIII of the Code of Civil Procedure. The Court should in every such case, be satisfied (Order XXXVIII, Rules 1 and 5), that the defendant has or is about to dispose of or remove the property from its jurisdiction or that he has or is about to leave its jurisdiction.

3. Temporary injunction—It has been noticed that temporary injunctions are frequently issued *ex parte* by subordinate Courts without realising fully their consequences. The following instructions in respect of such orders should therefore be ordinarily followed:

(i) The Court should scrutinise carefully the plaint the application and the affidavit before interfering with the defendants' rights and should satisfy itself that some recent happenings have justified the interference without notice to the defendant.

(ii) Court should use the rules in Order XXXIX Civil Procedure Code, with great discrimination, and should not overlook the significance of the word "may" wherever it occurs. It should not treat the exception in Rule 3 as the normal procedure. Interlocutory injunctions should be granted *ex parte* only in very exceptional circumstances, and only when the plaintiff can convince the Court that by no reasonable deligence could he have avoided the necessity of applying behind the defendants' back.

(iii) Such injunctions, when granted should be limited to a week or less, *i.e.*, the minimum time within which a defendant can come before the Court, assuming that to get rid of the injunctions, he will be prepared to use the greatest expedition possible.

(iv) The Court should state clearly what acts it has restrained. Vague orders such as "Issue of temporary injunctions as prayed" should be avoided. Where only some of the acts mentioned in the petition need to be urgently restrained the *ex parte* order should be confined to these only. The plaint or petition should not merely be copied out.

(v) When the defendant appears and files his affidavit, the plaintiff should be given only a few days to answer it. The contested application should then be heard, as soon as possible, and if the Judge cannot dispense it of at once, should, for the term of the adjournment which should be as short as possible, either grant an *ad interim* injunction, or obtain an undertaking from the defendant not to do any acts complained against.

(vi) After the plaintiff has obtained an interim or *ex parte* order, the Court should take care to see that he does not abuse the advantage by resorting to the usual dilatory tactics; such as delay in deposit of process fees, evasion of service of summons on a pro-forma defendant interested with the plaintiff in delaying the suit or in other manners.

4. (a) *Ex parte injunctions*—The above instructions are not intended to restrict the discretion of Courts, but every application for an *ex parte* injunction should be very carefully considered in the light of these instructions and should not be granted unless sufficiently good grounds are made out.

(b) *Death, marriage or insolvency of parties abatement*—The procedure to be followed in the event of death, marriage, or insolvency of parties is laid down in Order XXII, Civil Procedure Code, Proper steps must be taken to bring the legal representatives of the person concerned (the Receiver in the case of a person who is declared an insolvent) on the record within the period of limitation. Otherwise the suit is liable to abate wholly or partly in certain cases. The abatement takes place automatically and a formal order of abatement, though not essential, should be

usually recorded. The abatement can be set aside on an application by the aggrieved party, if sufficient cause is shown (Order XXII, Rule 9).

There is no abatement if a party dies after the conclusion of the case but before judgment. In such cases judgment may be pronounced and will take effect as though it had been pronounced while the party was alive.

In certain cases, the abatement of a suit as against one defendant results in the dismissal of the whole suit. Reference may be made in this connection to 1. L. R. X. Lah. 7 F.B.

(c) *Compromises—Compromise or adjustment of suits*—Where a Court is satisfied that a claim has been adjusted by any lawful agreement or compromise or the claim has been satisfied wholly or in part, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree accordingly so far as it relates to the suit. In cases where the compromise goes beyond the subject matter of the suit, the directions given in 46-1-A 240, 244 and I.L.R. 18 Cal. 485 should be followed in preparation of decrees.

When a minor is concerned, the Court should consider and record a finding as to whether the compromise or adjustment is for the benefit of the minor, and pass an express order granting or refusing leave, for the purpose as it may think fit.

As to compromises in cases of minors *see* Chapter 1-M (d).

As to forms of decrees based on compromises *see* Chapter 1-B paragraph 5.

As to stay of hearing on the ground of compromise *see* Chapter 1-K paragraph 11.

(d) *Amendment and Review*—When a case is decided on the merits, the Court has no power to vary the judgment or decree, except by way of amendment under Sections 151 and 152 or by review under Order XLVII, Civil Procedure Code. The scope of amendment is very limited, being confined to clerical or arithmetical errors, accidental slips, etc. Review can be granted only on the grounds specified in Order XLVII. The words "any other sufficient cause" occurring in Rule 1 of Order XLVII have been held by their Lordships of the Privy Council to mean "a reason sufficient on grounds at least analogous to those specified immediately previously." (*See* I.L.R. Lahore l27-P.C.).

(e) *Section 151, Civil Procedure Code—Inherent powers*—The scope of Section 151, Civil Procedure Code, is frequently misunderstood and applications are made under that section, which do not properly fall within its purview. The section is widely worded to enable Courts to do justice in proper cases, but it cannot be used so as to override the express provisions of Statute. For instance, a suit which is barred by limitation, cannot be heard in the exercise of inherent powers under Section 151. But where there is no express provision of law on a particular point inherent powers may be used in proper cases in the interests of justice. For instance, it has been held that when an application for execution is dismissed in default, it may be restored in the interests of justice on sufficient cause being shown, although there is no express (I.L.R. II, Lahore 66).

Part M
SPECIAL FEATURES OF CERTAIN CLASSES OF CASES

(a) Cases under Punjab Customary Law

1. Punjab Laws Act—Custom forms a dominant feature of the Civil litigation in the Punjab. Section 5 of the Punjab Laws Act, 1872, lays down that in all questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be custom, when there is any custom applicable to the parties, provided the custom is not contrary to justice, equity, or good conscience and has not been altered or abolished by any statute or declared void by any competent authority. In other cases, Muhammadan Law in the case of Muhammadans and Hindu Law in the case of Hindus, is to be applied.

2. (a) *Proof of Custom*—The vast majority of the rural population in the Punjab follow custom. It is the exception rather than the rule for the Hindu and Muhammadan Law to be applied in their entirety. The ascertainment of custom, when it is disputed of often a matter of difficulty. The records of trival custom (*Riwaj-i-am*) prepared by Government Officer for the various Districts are helpful and are accepted *prima facie,* as good evidence of the customs stated therein *(see* 45 P.R. 1917-P.C.). Judicial decisions have also to a large extent defined customs in respect of various tribes and the rules deduced therefrom will be found summarised in a convenient form in Rattigan's "Digest of Customary Law."

The Value of entries in *Riwaj-i-am* may, however, be small if these affect adversely the rights of females or any other cases of persons who had no opportunity of appearing before the revenue authorities. A few instances may in such cases suffice to reput the presumption of correctness attaching to such the records. [*Vide* I.L.R. 1941, Lah. 154 (P.C.) *Subhani's case* and (1955) I Supreme Court Reports 1191].

COMMENTS

It is well settled that that though the Riwaj-i-ams are entitled to an initial presumption in favour of their correctness irrespective of the question whether or not the custom, as recorded is in accord with the general custom, the quantum of evidence necessary to rebut that presumption will, however, vary with the facts and circumstances of each case.

Where, for instance, the Riwaj-i-am lays down a custom in consonance with the general agricultural custom of the province, very strong proof would be required to displace that presumption; but where, on the other hand, the custom as recorded in the Riwaj-i-am is opposed to the custom generally prevalent, the presumption will be considerably weakened.

Likewise, where the Riwaj-i-am affects adversely the rights of the females who had no opportunity whatever of appearing before the Revenue authorities, the presumption will be weaker still and only a few instances would be sufficient to rebut it. *Salig Ram,* v. *Mt. Maya Devi,* AIR 1955 SC 266 : 1955 (1) SCR 1191. (See also '*Khan Beg* v. *Mt. Fateh Khatun',* AIR 1932 Lah. 157, '*Jagat Singh* v. *Mst. Jiwan',* AIR 1935 Lah. 617, '*Mst. Subhani* v. *Nawab',* AIR 1941 PC 21).

If the Riwaj-i-am produced is a reliable and a trustworthy document, has been carefully prepared and does not contain within its four corners contradictory statements of custom and in the opinion of the Settlement Officer is not a record of the wishes of the persons appearing before him as to what the custom should be, it would be a presumptive piece of evidence in proof of the special custom set up. *Salig Ram,* v. *Mt. Maya Devi,* AIR 1955 SC 266 : 1955 (1) SCR 1191. (See also '*Qamar-ud-Din* v. *Mt. Fateh Bano',* AIR 1944 Lah. 72, '*Mohammad Khalil* v. *Mohammad Baksh',* AIR 1949 EP 252.)

Though the entries in the *Riwaj-i-am* were entitled to an initial presumption in favour of their correctness, irrespective of the question whether or not the custom as recorded was in accord with the general custom, the *quantum* of evidence necessary to rebut this presumption would, however, vary with the facts and circumstances of each case; where, for instance, the *Riwaj-i-am* laid down a custom in consonance with the general agricultural custom of the Province, very strong proof would be required to displace this presumption, but where on the other hand, this was not the case and the custom as recorded in the *Riwaj-i-am* was opposed to the rules generally prevalent, the presumption would be considerably weakened. Likewise, where the *Riwaj-i-am* affected adversely the rights of females who had no opportunity whatever of appearing before the revenue authorities, the presumption would be weaker still and only a few instances would suffice to rebut it. *Mussammat Subhani and Others,* v. *Nawab and Others,* I.L.R. (1941) XXII Lahore 154 PC. (*Khan Beg* v. *Mst. Fateh Khatun,* I.L.R. (1932) 13 Lah. 276, approved.)

Mere mention of the name of a person in the pedigree-table as the common ancestor is no proof of the fact that every piece of land held by his descendants (howsoever low) was originally held by and descended from him in succession from generation to generation. A genealogical tree of this kind is prepared merely to indicate the relationship of the proprietors in a particular village and is in no sense intended to be a record of the acquisition of every bit of land held by all persons whose names appear in it. *Mussammat Subhani and Others,* v. *Nawab and Others,* I.L.R. (1941) XXII Lahore 154 PC. (*Chanda Singh* v. *Mst. Banto,* I.L.R. (1927) 8 Lah. 584, approved.)

The English rule stated in Blackstone's *Commentaries* that a custom in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary, does not apply to Indian conditions. It is true that a custom derives its force from the fact that it has, from long usage, obtained in a particular district, the force of law. It must be ancient, but it is not of the essence of the rule that its antiquity must in every case be carried back to a period beyond the memory of man–still less that it is ancient in the English technical sense. *Mussammat Subhani and Others,* v. *Nawab and Others,* I.L.R. (1941) XXII Lahore 154 PC. (*Bahadur* v. *Mst. Nihal Kaur,* I.L.R. (1937) Lah. 594 (F. B.), disapproved.)

A judicial decision, though of comparatively recent date, is of value as evidence of custom, if it contains on its record, specific instances of custom of sufficient antiquity as to rebut the presumption in favour of statements in the *Riwaj-i-am. Mussammat Subhani and Others,* v. *Nawab and Others,* I.L.R. (1941) XXII Lahore 154 PC.

(b) *Migrants and Displaced persons*—In view of the wholesale migrations of population after the partition of Punjab the question may often arise whether a person is governed by the Customary Law of home of origin or of the land where he has settled down. The consensus of authority is that person or tribes may be governed by the customs of their original home and not by the customs of the land where they settled down unless it is shown that in any matters they have adopted the customs of their new habitation. The presumption is however rebuttable on proof of special circumstances. See Rattigan's "Digest of Customary Law" and Mulla's "Hindi Law."

3. Personal Law—When in any particular instance, no role of custom can be found, the Court must fall back upon the personal law of the parties. *(See* 110 P.R. 1906-F.B.).

4. Limitation in certain custom suits—The provisions of Punjab Act I of 1920 which prescribes the limitation for suits relating to alienations of ancestral immovable property and appointments of heirs by persons who follow custom and Punjab Act II of 1920 which restricts the power of descendants or collaterals to contest such alienations or appointments should also be studied.

5. Law applicable to Muslims—Attention is drawn to Act XXVI of 1937 which lays down that notwithstanding any custom or usage to the contrary, in all questions (save those relating to agricultural land) the rule of decision in case where the parties are Muslim shall be the Muslims Personal Law. In order to obtain the benefit of this Act, a declaration has to be obtained.

(b) Money Suits

1. Typical money suits—(i) Some features of money suits deserve attention.

(ii) The typical money suit in the Mufassil is one between a creditor and an illiterate debtor. The suit is generally based on a running account consisting of petty items in the account book of the former with balances struck from time to time, or an agreement recorded in it with regard to larger loans borrowed on occasions of marriage, etc., and occasionally on a bound. Allegations of fraud, want of consideration, etc., are frequently made in defence and owing to the ignorance of the debtor, on the one hand and the frequent absence of regular accounts on the other, the cases require careful sifting. The examination of the parties themselves under Order **X,** Rule 2, Civil Procedure Code, before framing the issues is generally very useful *(see* Part F of this Chapter.) When fraud misrepresentation, undue influence, etc., are pleaded, the particulars thereof should be carefully elicited.

2. (a) *False entry*—When the creditor or some one at his instance has shown a higher amount in such documents than the amount actually advanced, the Court shall disallow the whole claim with costs unless the creditor can satisfy the Court that the mistake was accidental or *bona fide* (please *see* Section 37 of Punjab Relief of Indebtedness Act, as amended by Punjab Act XII of 1940).

(b) *Punjab Regulation of Accounts Act*—Special attention is drawn to the provision of the Punjab Regulation of Accounts Act I of 1930. This Act applies generally to all loans advanced after the commencement of the Act which came into force on 1st July, 1931.

3. Suits on *bahi* account. Copy of the account—When a suit is based on a *bahi* account, that must be produced with the plaint. To avoid inconvenience to the plaintiff, he is allowed to file a copy, but the copy must be supported by an affidavit by the party producing it to the effect that it is a true copy or by a certificate on the copy that it is a full and true translation or transliteration of the original entry. No examination or comparison by any ministerial officer shall be required except by the special order of the Court. It should be noted however that although a copy is allowed to be filed, the original account must be produced (except when it is permissible to produce a certified copy, *e.g.,* under the Banker's Books Evidence Act, 1891), later in the course of the trial when evidence is led in order to prove it.

4. Presumption as to entries in accounts books—Entries in book of account are relevant under Section 34 of the Indian Evidence Act, if the books are shown to be regularly kept. Such entries are however not by themselves sufficient to charge any person with any liability and must be supported by other evidence. There may be cases where the plaintiffs statement alone may be considered sufficient corroboration of these entries.

5. Bonds and agreements—An agreement for the payment of a debt if attested by a witness would be liable to be stamped as a 'bond'. For definition of bond please see Section 2(5) of the Indian Stamp Act. A document insufficiently stamped may be taken in evidence on payment of the deficiency in stamp and penalty as provided in Section 35 *(ibid).* For further instructions please see Chapter 4 of Volume IV.

6. Registration of bonds—Registration is not obligatory in the case of simple bonds creating no charge on any immovable property. As regards bonds creating such a charge Section 17 of the Indian Registration Act should be consulted.

7. Thumb-mark and signatures—When the thumb-mark or signature on a document, is denied it must be proved in the proper manner. As regards thumb marks the most convenient method is to obtain thumb-marks of the person concerned in Court, if possible, and send the same together with the disputed thumb-mark for comparison by an expert to the Finger Print Bureau. The report of the expert must be supported by his testimony on oath or solemn affirmation. Such testimony can be conveniently obtained by issuing a commission for the purpose to the Sub-Judge at Phillaur. As regards proof of signatures, Sections 45-47 of the Indian Evidence Act may be consulted, also Chapter I-G of this Volume.

8. Proof of consideration—When the execution of document is admitted or, proved the onus will be shifted to the executant to prove absence of consideration, if he relies on any such plea. Section 12 of the Punjab Debtor's Protection Act (Act No. II of 1936), however, provides an exception to this rule and should be carefully studied.

9. Costs and interest—The instructions contained in Chapter 11-C about the "Award of costs" and in Chapter 11-D about the "Award of interest" should be noted carefully.

10. Payment by debtors—Section 3 of Punjab Relief of Indebtedness Act enables any person who owes money to deposit the same in Court in full or part payment to his creditor. It is not necessary that the creditor should have filed a suit or taken any other steps to recover the debt. Interest ceases to run from the date of the deposit. A notice about the deposit should always be sent to the creditor. For form of notice see form No. 218, Vol. VI-A, Part A-II.

11. Rules as to deposits—The State Government has made the following rules [14] under Section 32 of the Punjab Relief of Indebtedness Act—

Rules

(1) These rules may be called the Punjab Relief of Indebtedness (Deposit in Court) Rules, 1935, and shall apply to all deposits to be made under Section 31 of the Act.

(2) In these rules "the Act" means the Punjab Relief of indebtedness Act, 1934.

(3) Sums less than Rs. 1,000 may be deposited in any stipendiary Civil Court having jurisdiction within the district in which the debtor resides:

Provided that where there is more than one such Court in the same town the deposit shall be made in the Court exercising the highest pecuniary jurisdiction.

(4) Sums of Rs. 1,000 or over shall be deposited only in the Court of the Senior Sub-Judge of the district in which the debtor resides.

(5) Deposits may be made either by postal money order or by the debtor in person.

(6) All sums deposited shall be accounted for and dealt with according to the ordinary rules for the time being in force in Courts into which they are paid.

(7) Notices under sub-section (2) of Section 31 of the Act shall be served upon the creditor by registered letter acknowledgement due at the expenses of the debtor.

12. Punjab Registration of Money Lenders' Act—Attention is drawn to the Punjab Registration of Money Lenders' Act, 1938 (Punjab Act III of 1938) according to which suits and applications for execution by money-lenders are barred unless the money lender is registered and licensed. (Section 3).

(c) Pre-emption Suits

1. Prevailing law—The law of pre-emption in the Punjab is now governed by the Punjab Pre-emption Act, 1913, and custom plays a comparatively minor part in it.

2. Deposit of security for costs—In every pre-emption suits, the Court is bound to require the plaintiff before the settlement of issues to deposit a sum not exceeding one-fifth of the probable value of the property which is the subject matter of the suit or give security to that extent, within a specified time. If the plaintiff fails to comply with the order within the specified time, or such further time as the Court may allow, his plaint must be rejected. (Section 22 Punjab Pre-emption Act).

3. Court to enquire *suo motu* certain matters—Order XX, Rule 14 of the Code directs that a pre-emption decree shall specify a day on or before which the purchase money with costs if any shall be paid into Court. The Courts should not fix a period of time for the deposit of the money but should mention a definite date. Care should further be taken to see that the specified date is not a day on which the Courts may be expected to be closed.

(d) Suits by and against minors and persons of unsound mind

1. General—The procedure to be followed in the case of suits by or against minors is laid down in the rules in Order XXXII of the Code of Civil Procedure. Attention is invited to the additions and alterations made in these rules by the High Court.

2. Next friend and guardian *ad litem* defined—A minor being legally incapable of acting for himself, the law requires that suit by or against such a person should be conducted on his behalf by a person who has attained majority and is of sound mind. A person conducting a suit on behalf of a minor plaintiff is called his "next friend", while a person defending it on his behalf is called a guardian *ad litem* for the purpose of the litigation.

3. Permission to sue—(a) Any person as described above may institute a suit on behalf of a minor and no permission of the Court is necessary for the purpose. An exception to this general rule has however been made by sub-rule (2) of Rule 4 of Order XXXII. If the minor plaintiff has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor, unless the Court considers, for reasons to be recorded, that it is for the minors' welfare that another person be permitted to act.

(b) The next friend of a minor plaintiff can be ordered to pay any costs in the suit as if he were the plaintiff.

4. Minor may not be proceeded against *ex parte*—A "guardian *ad litem"* for a minor must be appointed by the Court and the trial of the suit cannot proceed until such an appointment is made. The Court cannot proceed, or pass an order or decree, *ex parte* against a minor.

An application for the appointment of a guardian *ad litem* of a minor and the affidavit filed therewith shall state:

(a) Whether or not the minor has a guardian appointed under the Guardians and Wards Act, 1890, and if so, his name and address;

(b) the name and address of the father or other natural guardian of the minor;

(c) the name and address of the person in whose care the minor is living;

(d) a list of relatives or other persons who *prima facie* are most likely to be capable of acting as guardian for the minor;

(e) how the person sought to be appointed guardian or next friend is related to the minor;

(f) that the person sought to be appointed guardian or next friend has no interest in the matters in controversy in the adverse to that of the minor and that he is a fit person to be so appointed;

(g) whether the minor is less than fifteen years of age.

[15]**5. Notice to minors and relatives etc.**—No order should be made appointing a guardian *ad litem* unless notice is issued to the guardian of the minor appointed or declared by an authority competent in that behalf, or where there is no such guardian to the father or where there is no father to the mother, or where there is no father or mother to other natural guardian of the minor, or, where there is no father, mother or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule. A notice to the minor is not essential under the rules (as amended) but should ordinarily issue when the minor is shown to be over fifteen years of age as he may in that case be able to take an intelligent interest in the selection of his guardian and the conduct of the proceedings.

6. Choice of guardian, appointment of Court officers or pleader, funds for defence land accounts to be kept. Duties of guardian—In appointing a guardian *ad litem,* the following order of preference shall be observed—

(i) If there is a guardian appointed or declared by a Court he must be appointed unless the Court considers that it is for the welfare of the minor that some other person should be appointed, the Court must record its reasons;

(ii) in the absence of a guardian appointed, or declared by a Court, a relative of the minor best suited for the appointment should be selected;

(iii) in the absence of any such relative, one of the defendants should be appointed, if possible;

(iv) and failing such a defendant, a Court official or a pleader may be appointed.

It should be remembered that no person can be appointed to act as a guardian *ad litem* without his consent (in writing). Consent may, however, be presumed unless it is expressly refused.

When a Court official or pleader is appointed to act as a guardian the Court has a power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purposes of defence. The Court official or a pleader should be required to maintain and produce accounts of the funds so provided and these should ultimately be recovered from such party (or out of the property of the minor) as the Court may think it just to direct after the result of the suit.

The Court official or pleader appointed by the Court as the guardian *ad litem* of minor defendant, should to the best of his ability communicate with the minor and his relatives in order to ascertain what defence can properly be taken in the case and further try to substantiate that defence by adducing proper evidence.

7. Rejection of plaint where minor is not represented—The plaint may be "taken off the file" and all orders made may be set aside, if a minor is not properly represented and the person filing the plaint or obtaining the orders whether a legal practitioner or not, may be liable to pay costs.

8. Appointment of guardian enures or appeal and execution—When a guardian *ad litem* is appointed by a Court the appointment enures for the whole of the litigation including appeals and execution proceedings arising out of the suit.

[16]**9. Compromise and agreement**—A next friend or guardian *ad litem* cannot enter into any compromise or agreement with reference to the suit without the leave of the Court expressly recorded in the proceedings. While taking leave of the Court for entering into any agreement or compromise on behalf of the minor, the next friend or guardian *ad litem* and pleader (when the minor is represented by pleader) must state through affidavit or certificate that such an agreement or compromise is for the benefit of the minor, the Court should be satisfied after applying its mind to all the circumstances of the case that the compromise is really for the benefit of the minor and should record its opinion to that effect. A failure to observe these directions may result in the compromise or agreement being avoided at the instance of the minor (Order 32, Rule 7).

10. Rules relating to suits by or against minors apply *mutatis mutandis* to suits by or against persons of unsound mind.

(e) Suits by Indigent Persons

1. Attention is called to Order XXXIII of the Code on the subject of suits by indigent persons and the steps which should be taken to protect the interests of Government in such cases.

[17]**2. Examination of plaintiff, and evidence for admission**—Notice to Government: Before a pauper suit is admitted the petitioner or his authorised agent, when the applicant is exempted

from appearance in Courts should be examined regarding the merits of the claim and the property of the applicant. If it appears to the Court that the suit is not framed and presented in the manner prescribed by Rules 2 and 3 of Order 33, or the applicant is not a (indigent person), or that he has fraudulently made away with any property within two months preceding the presentation of the plaint, or that his allegations do not show a cause of action, or that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has entered into an agreement with him to finance the litigation or the allegations made by the applicant the application show that the suit would be barred by any law for the time being in force, the application must be rejected. If the Court sees no reason to refuse the application, it must fix a day (of which at least ten days previous notice must be given to the opposite party and to the Government pleader on behalf of Government) for receiving such evidence is the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in dis-proof thereof, and can only pass final orders on the applicant after hearing the evidence and arguments brought forward on the days so fixed.

Limitation—By insertion of Rule 15A in Order 33 CPC by amending Act, 1976, it is provided that the suit in respect of indigent person shall be deemed to have been instituted on the date on which the application was presented. Whenever an application to sue as an indigent person is refused by the Court, the Court shall allow such person to pay the Court-fee and the costs if any within such time as may be fixed by the Court.

3. Dispaupering—Under the provisions of Order XXXIII, Rule 9, of the Code of Civil Procedure, the Court may, under certain circumstances order a plaintiff to be dispaupered.

4. Copy of decree to be sent to Collector—Order XXXIII, Rule 14, directs that where an order is made under Rules 10, 11, or 12, the Court shall forthwith forward a copy of the decree to the Collector.

(f) Suits for Redemption and Foreclosure of Mortgages

1. Notice to mortgagor, conditional sale in case of land not permitted—The law regulating the procedure in cases where the morgagee whose mortgage-deed also contains a provision for conditional sale, desires to foreclose the mortgage is often misunderstood. Regulation XVII of 1806 is still be law on the subject. It will be seen that, whatever the terms of conditional sale the mortgagee cannot enforce them till he has, by summary petition to the Court, caused notice to be served on the mortgagor to the effect that, if the later does not pay the sum secured within one year, the mortgage will be held foreclosed. After the lapse of this year, and not till then the mortgagee can sue for possession, as owner or, if in possession, to be declared owner in accordance with the term of the mortgage.

2. Court competent to hear—Only a District or Additional Judge can deal with applications under Sections 7 and 8 of Regulation XVII, of 1806. The procedure prescribed in the Regulation should be very strictly observed as otherwise the notice may have no legal effect.

3. Dismissal for default—According to Order IX, Rule 9, of the Civil Procedure Code (as amended by the High Court), when a suit for redemption is dismissed in default under Order IX, Rule 8, the plaintiff is not precluded from bringing another suit for redemption of the mortgage.

4. Summary procedure for redemption—The Redemption of Mortgages (Punjab) Act, 1913, provides a summary procedure for redemption of land through the Collector in the State. But any party aggrieved by the decision of the Collector, can under certain circumstances institute a suit in a Civil Court to establish his right *{see* Section 12 of that Act).

(g) Suits for Declaratory Decrees

1. Issue as to possession—The proviso to Section 42 of the Specific Relief Act lays down that a declaratory decree cannot be passed in a case in which other relief than a mere declaration can be sought. Hence in a suit for a declaration of title to immovable property, where the defendant denies that the plaintiff was in possessions of the property on the date of the suit, the Court should first of all decide this point. If it is found that the plaintiff was not in possession of the property on the date of the institution of the suit, his suit must fail unless the Court, having regard to all the circumstances allows the plaint to be amended.

2. All issues to be framed—These instructions are not to be taken to imply that the whole of the pleadings should not be exhausted and issues drawn on all points of conflict between the parties at the first hearing, but that at the trial of the issues, the issue as to possession should be first tried and disposed of where this can be conveniently done.

(h) Suits for accounts

1. Account may be preferably taken after disposal of other points—Order XX, Rule 16, of the Code directs that in all suits where it is necessary in order to ascertain the amount of money due to or from any party, that an account should be taken the Court shall before passing its final decree pass a preliminary decree directing such accounts to be taken as it thinks fit. This is the general rule though where the matter appears to be simple the Court may pass a final decree straightaway.

2. Filling of accounts and evidence—At the time of passing the preliminary decree, directing the rendition of accounts, the Court should decide the rights of the parties and as to who the accounting parties are and for what period the accounts are to be taken. In case of partners, their respective shares in the profits and loss of the joint business should be stated. Under Order XX, Rule 17, the Court can also give directions, in the preliminary decree or by any subsequent order, as to the mode in which the accounts have to be taken or vouched and may in particular direct that books of accounts shall be taken as *prima facie* evidence of the truth of the matters therein contained; with liberty to the interested parties to object to any portion of this account. In partnership cases books of account should be treated as *prima facie* evidence of the truth of the matters stated therein under the general law and a special direction in this regard is not necessary.

3. Commission—After the preliminary decree the Court may go into the accounts itself but in cases where the accounts are lengthy or complicated it may be helpful to issue a Commission for the purpose. Rules 11 and 12 of Order XXVI indicate that the Commission may be for examination and adjustment of accounts only or the Commissioner may also be asked to report his opinions on the points referred for his examination. When the Court decides to issue a Commission, his duties shall be stated with precision and particularity. The Commissioner is

neither an arbitrator nor the Judge and the determination of any issue in the case cannot be delegated to him. The Commissioner is to place himself as an assistant to the Court so as to explain the accounts and give to the Court all the information which the accounts give in order to enable the Court to decide; unless he is also ordered to report under Order XXVI, Rule 12(1) his own opinion on the points referred to for his examination.

4. Directions to Commissioner—(1) If in any suit or matter it is necessary to take an account the order or preliminary decree of the Court shall contain the following direction as far as in the opinion of the Court issuing the commission they are adopted to the requirements of the case:

(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) The period within which the statement of account, objection and surcharge are to be filed.

(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, or the Commissioner may desire to obtain, its instructions.

(2) The statement of account shall be in the form of a debtor and creditor account and shall be verified by the accounting party or his agent. The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(3) The statement of an objection to an account, or to the report of a Commissioner, shall specify the items to which objection is taken by reference to their number in the account or report, or the date of the item and page of a particular book of account.

(4) The statement of surcharge shall specify the amount with respect of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him.

(5) The statement of objection or surcharge shall also state (a) the grounds of each objection and surcharge, and (b) the balance, if any, admitted or claimed to be due; and it shall be verified by the affidavit of the party concerned or his agent.

(6) If any party fails to file his statement of account or objection and surcharge, within the period allowed, the Commissioner shall report the fact to the Court, and on application of defaulting party, the Court, may extend the period or direct the Commissioner to proceed *ex parte* as regards such party or direct any other party to file a statement of account, or the Court may proceed to decide the suit forthwith on the evidence before it. Evidence shall not be admitted with respect to an objection or surcharge not included in a statement of objection or surcharge.

(7) If the Commissioner is unable to submit his report within the time fixed by the Court he shall 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.

(8) When the case before him is ready for hearing, the Commissioner shall after reading the statement filed before him and after examining the parties, if necessary, ascertain the points on which the parties are at issue and require them to produce their documentary or oral evidence on such points.

(9) After the evidence has been duly taken and the parties have been heard, the Commissioner shall submit his report together with a statement in the form of a diary of the proceedings heard before him each day. If he is empowered under Order XXVI, Rule 12(1) to state his opinion on the matter 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.

(i) Procedure in "Hadd-Shikni" cases

1. Local inquiry—In "Hadd-Shikni" suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court it is generally desirable that enquiry be made the spot. This can usually be done in the following ways:

(a) by suggesting that one party or other should apply to the Revenue Officer to fix the limits, under Section 101 (1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;

(b) by appointing a local Commissioner; and

(c) by the Court itself making a local enquiry.

2. Enquiry by Revenue Officer—An order of the Revenue Officer made under Section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice to, the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do not coincide with the limits of an estate.

3. Appointment of Commissioner—Similarly the report of the local Commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it.

No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a local Commissioner. The appointment of retired Revenue Officers is to be preferred as these Officers have the spare time and the inclination for completing the work with expedition. A commission issued to a Revenue Officers in service necessitates the obtaining of permission of the higher authorities and this along with the fact that such Revenue Officers are usually busy often results in delay in the disposal of the case. The

wishes of the parties in regard to the appointment of a particular individual as Commissioner for local investigations should be taken into consideration while making such appointments.

4. Instructions for the guidance of Commissioners—On the motion of the Judges, the Financial Commissioners have issued the following detailed instructions for the guidance of Revenue Officials or Field Kanungos appointed as Local Commissioner in Civil suits of this nature.

Financial Commissioner's Instructions

(i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute as near to it as he can, and if possible, not more than 200 kadams, apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

(ii) In the report to be submitted by him, the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant portion of the current Settlement field map of the village showing the fields, if any, with their dimensions *(Karu kan)* of which he took measurements, situated between the points mentioned in Instruction No. (i) above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.

(iii) If a question is raised as to the position of the disputed boundary according to the field map of the Settlement preceding the current Settlement that also should be demarcated on the ground, so far as this may be possible, and also shown in the copy of the current field map to be submitted under Instruction No. (ii).

(iv) On the same copy should be shown also, the limits of existing actual possession.

(v) The areas of the fields, abutting on the boundary, in dispute, as recorded at the time of the last Settlement and those arrived at as a result of the measurement on the spot should be mentioned

in the Field Kanungo's report with an explanation of the cause or causes of the increase or decrease, if any, discovered.

(vi) When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end, he should record the statements of all the parties to the effort that they have seen and understood the measurements that they have no objection to make to this (or if they have any objection he should record it together with his own opinion) and that they do not wish to have report comes before the Court, one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

(vii) The above instructions should be followed by Revenue Officers of Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.

[18]Suits relating to matters concerning the family

Order 32A has been newly inserted by the CPC (Amendment) Act 104 of 1976. This new Order lays down the procedure for suits concerning family matters. For the purposes of this Order each of the following shall be treated as constituting a family, namely:

(a) Any man and his wife living together and any child or children, being issue of theirs or being maintained by such man or his wife.

(b) A man not having a wife or not living together with his wife any child or children, being issue of his and any child or children, being maintained by him;

(c) A woman not having a husband or not living together with her husband, any child or children being issue of heirs, and any child or children being maintained by her;

(d) A man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(e) Combination of one or more of the groups specified in above clauses.

By insertion of explanation it is made clear that concept of 'family' is not affected by any personal law or in any other law for the time being in force. (Rule 6, Order 32A).

Suits concerning family matters: Sub-rule (2) of Rule 1, Order 32A provides the following suits or proceeding concerning the family:

A suit or proceeding—

(a) for matrimonial relief;

(b) for declaration as to the legitimacy of any person;

(c) for the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) for maintenance;

(e) for the validity or effect of an adoption;

(f) for wills, intestacy and succession;

(g) for any other matter concerning the family in respect of which the parties are subject to their personal law.

Part N
MISCELLANEOUS NOTIFICATIONS, ETC.

General Remarks

1. All references in Government Notification to the Chief Court of the Punjab or High Court of judicature at Lahore or East Punjab High Court at Simla shall be construed as referring to the Punjab High Court at Chandigarh.

2. All references in the Notifications to the Lieutenant-Governor, Lieutenant-Governor in Council, Local Government and Governor in Council shall be construed as referring to Punjab Government.

3. All references in the notifications to the Governor-General of India in Council, Governor-General of India, Governor-General in Council, Governor-General, Government of India shall be construed as referring to Central Government or the President as the case may be.

I. Court Language

1. (a) English has been declared to be language of the High Court *(Vide* Punjab Government Notification No. 316-G, Dated the 18th January 1906).

(b) The language of the Courts of subordinate to the High Court shall be—

(i) Hindi in Devnagri script in the Hindi Region and Punjabi in Gurmukhi script in the Punjabi Region;

(ii) Hindi, Punjabi and Urdu is the language of Union Territory at Chandigarh.

Provided that English shall continue to be used for those Court purposes within the State for which it was being used immediately before the 2nd October, 1962.

Explanation—The expressions 'Hindi Region' and 'Punjabi Region' shall have the meaning assigned to them in the Punjab Regional Committees Order, 1957.

(Vide Punjab Government Notification 69 (234)-4J-62/42279, dated the 28th September, 1962).

(c) 'Punjabi' in Punjab and 'Hindi' in Haryana, Himachal Pradesh and Union Territory at Delhi and Chandigarh shall be the language in Revenue Courts subordinate to their respective High Courts.

II. Powers under Sections 91 and 92 of the Code of Civil Procedure

The powers conferred by Sections 91 and 92 of the Civil Procedure Code on the Advocate-General may be exercised by all Deputy Commissioners in the Punjab. (Punjab Government Notification No. 1-E, dated the 1st January, 1909).

III. Extension of certain provisions of the Transfer of Property Act to Punjab

(a) Punjab Government, Revenue Department, Notification No. 1433-St., dated the 14th September, 1940—In exercise of the powers conferred by Section 1 of the Transfer of Property Act, IV of 1882, the Governor of the Punjab is pleased to direct that the provisions of Section 129 of the said Act, shall be extended to the following areas in the Punjab, namely—

(1) all Municipalities, and

(2) All Notified Areas notified under Section 241 of the Punjab Municipal Act, 1911.

(b) Punjab Government, Revenue Department, Notification No. 1605- R (CH)-55/589, dated the 26th March, 1955…….…… In exercise of the powers conferred by Section 1 of the Transfer of Property Act, IV of 1982, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to extend the provisions of Sections 54, 107 and 123 of the said Act with effect from the 1st April, 1955, to the entire State of Punjab. Punjab Government Notification No. 183-St., dated the 27th April 1935, is hereby cancelled.

1. Order 1, Rule 8 substituted by CPC Amendment Act No. 104 of 1976.

2. Order 6 Rule 14A inserted by CPC Amendment Act No. 104 of 1976.

3. Due to the changes made by CPC Amendment Act of 1976.

4. Rule 11 substituted by Act No. 104 of 1976.

5. Order VII, Rule 9 inserted by Act No. 104 of 1976.

6. Heading substituted by Act No. 104 of 1976.

7. Order VIII as amended by Act No. 104 of 1976.

8. As inserted by Act No. 104 of 1976.

9. Order XI, Rule 21 amended by Act No. 104 of 1976.

10. Substituted due to amendment of Order VIII Rule 1 by CPC Amendment Act No. 104 of 1976.

11. Added vide Notification No. 202/Rules/DHC dated 14-12-2001.

12. Rule 4 deleted vide Notification 61/Rules/DHC dated 21-4-1998. The text of deleted Rule is as under:—

4. Adjournment caused by absence of the Judge or unexpected holiday—On the occurrence of an unanticipated holiday or in the event of the Presiding Officer of a Court being absent owing to sudden illness or other unexpected cause, all cases fixed for the day in question shall be deemed to have been automatically adjourned to the next working day when the Presiding Officer is present and it shall be the duty of the parties or their counsel (but not of witnesses) to attend Court on that day.

Whenever possible the Presiding Officer, should as soon as may be, fix fresh dates in cases fixed for the date which is declared a holiday or for which he has obtained leave, and issue notices to the parties, their counsel and witnesses, of the fresh dates fixed.

In the case of a Small Cause Court where there are Additional Judges, the provisions of sub-section (4) of Section 8 of the Provincial Small Cause Court Act (IX of 1887) should be followed.

13. Substitution in view of amendment made by Act No. 104 of 1976.

14. Notification No. 2461-J-36/16796, dated the 26th May, 1936.

15. Substituted in view of amendment made by Act No. 104 of 1976.

16. Substituted in view of insertion of Rule 7 (1A) in Order 32 CPC by Act No. 104 of 1976.

17. Substituted in view of insertion of Rule 5 in Order 33 CPC by Act No. 104 of 1976.

18. Added due to insertion of Order 32A CPC by Act No. 104 of 1976.