



# REPORT

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## **REGIONAL TRAINING ON CASE MANAGEMENT RULES, 2018 (CIVIL PROCEDURE CODE)**

26th - 30th November, 2018

By

**Ahmed Iftikhar,**

Director Instructions

**Zia ur Rehman,**

Director Administration

Khyber Pakhtunkhwa Judicial Academy, Peshawar

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## **Introduction:-**

"Right to speedy trial is not a fact or fiction but a constitutional reality". On the other hand, delay in our justice system has become proverbial and is badly eroding the confidence of the litigants. Solutions to root out the problem may be many. But for the first time, a systematic study was made into such causes at KPJA and Case Management Rules, were proposed for deliberation on 18th April, 2017. After general consensus of the participants and subsequently the approval accorded by honorable The Administration Committee of Peshawar High Court, Peshawar, the rules paved their way for legislation.

Recently the data was fetched from District Courts by Peshawar High Court, to ascertain applicability of the rules. As a further follow up, mainly to give proper comprehension of the rules, regional trainings were devised. Letter reflecting the same is Annexure-A, wherein we had been ordained to deliver trainings, at different districts of Mansehra, Haripur, Abbottabad, Malakand, and Buner.

## **Methodology:-**

Before the training, we deliberated an effective methodology; the training sessions, both having formal, informal flavor; proper time to question and answer session; conceptual clarity combined with addressing the concerns. We had in mind that judges in a joint session may not be comfortable to vent their feelings. We decided for preliminary informal session with judges, followed by a more formal joint session of the bench and bar. Worthy District & Sessions Judges concerned were apprised, of such an approach beforehand. Following the aforesaid methodology, we at every station, first held information session with Judges and thereafter formal session with bench and bar. Number of questions was raised during the training session, which we answered to the best of our abilities. All such questions and answers were recorded and are reproduced below;

## Questions & Answers:

S#	Query	Answer by Trainers
1	Whether the case management rules are mandatory or directory?	Case Management Rules are mandatory. In the proviso of Rule 1 of Order 9-A, CPC, it is mentioned that reasons have to be recorded for not calling the case management conference.
2	<p>Whether barring right of appeal/ revision against interlocutory order is not violative of fundamental provisions of the civil procedure code?</p> <p>Whether the High Court will not be burdened with Writ Petitions in such a case and the same will add to the miseries of litigants?</p>	<p>By its plain reading, Order 9A, rule 2(1) (c) has restricted right of appeal / revision against interlocutory order. To our understanding the same is not in conflict with the main body of statute. Section 104 CPC, while creating right of appeal against certain orders, mentions, the words "Save as otherwise provided". Furthermore, according to Section 121 CPC, rules in the first schedule have the effect as if enacted in the body of the Code. Since, interlocutory orders in the case management regime, are essentially aimed at furthering the said regime, they may not classify to fall, in the words, "case decided", used in Section 115 CPC.</p> <p>What is also necessary to emphasize is that, there is overwhelming tendency to halt the trials, by unnecessary and frivolous appeals/ revisions. The objective of inserting this proviso was to check this tendency. The new regime also promotes a non-trial-centric regime. By the time, a party aggrieved from the interlocutory order thinks of his grievance redressed, by way of wasting time in appeals/ revisions, he will have hopefully obtained a more fuller and effective remedy of summary judgment.</p>

		<p>Before passing the new amendment, summary judgment was already a feature of the law, under Order 15 CPC. The new rules have broadened its scope. Similarly, even before the enforcement of the new rules, the courts were obligated under Order 5, Rule 5 CPC, to differentiate ordinary summons from summons for final disposal. Further, it is clear from Order 5, Rule 5 CPC, that in small claim cases, all summon shall be the summons for final disposal. And courts have overlooked the fact that quite a large number of cases, fall within the domain of small claims.</p> <p>All said, the concern of the Bar, regards appeal/ revision has been noted, which will be so reflected in the report.</p>
3	How it will be possible to judge admissibility of document before framing of issues?	<p>There is a difference between the admissibility of document and its evidentiary value. Admissibility of documents is judged before framing of issues whereas evidentiary value of the documents is judged at trial, except, of course the weightage given to the documents, after their admissibility at the summary judgment stage. Even before the new rules, this was the situation as explained. Order 13 CPC requires the production of documentary evidence at first hearing and similarly the court's duty to judge the admissibility of the documents at that stage.</p>
4	What if application for rejection of plaint is filed, before the case management conference?	<p>There is no bar on receiving application at that stage. However, the same shall be decided after conferencing for application management. It needs no emphasis that it is duty of the court to evaluate competence of the plaint at the touch stone of the Order 7 Rule 11 CPC</p>

		before issuance of the process. And that duty was contemplated, even before the new rules.
5	How would you define statement of controversy?	After following the procedure of the discovery management which includes the examination of the parties, interrogatories, admissibility of documentary evidence and recording of admissions and denials, the court gets to real controversy between the parties and thus, keeping in view the likely variations from pleadings, it has been necessitated that before framing of issues summary of the claims of respective parties be obtained, which is in effect the statement of controversy.
6	How would you explain the practical difficulties of obtaining certified copies from the government departments and particularly from <i>Patwaris</i> ?	Of course getting certified copies from the Govt. departments, particularly from <i>Patwaris</i> is hard nut to crack. But to facilitate the parties, the court may call the relevant official at the first conference and after getting the list of documents, may pass direction for production of record till discovery management. The court is empowered so to do by Section 30 CPC read with Order 9A to Rule 1(VII)
7	What was the need of enforcement of case management rules, when Section 89 caters to situation?	Section 89-A CPC essentially provides scope for informal adjudication, whereas the case management is aimed at ensuring expeditious adjudication within formal justice system by promoting pro-active approach of the courts.
8	By Order 9A, Rule 2(1)(b) interlocutory applications have been barred during trial. Is it not against principles of natural justice? How can one foresee a situation where he will not be in	Every interlocutory application during trial has not been barred. The rule in fact carries an element of estoppel. Where any situation could have been foreseen by a party and necessary application was not moved at stage of application management, the same will be debarred and not otherwise. As for instance, if

	need of moving a genuine application during trial?	a witness dies, necessitating additional evidence, it will be seen by the court deciding the application, moved at the stage of trial, when the witness died and whether or not party was vigilant moving the application at an appropriate time.
9	How would you define summary judgment and what may be the possible cases for deciding case through summary judgments?	<p>There must have been no need to define summary judgment. Every judgment passed by the court exercising powers under Order 15-A, CPC must conform to the essential requirement of the judgment, that is to say of giving reasoned decision.</p> <p>Before enforcement of the new rules, Order 15 CPC envisaged passing a summary judgment where no triable issues were involved. The new rules have broadened the scope of the summary judgment by providing that summary judgment may also be rendered where there are, "no real prospect of succeeding on such claims or defending such claim". That in effect, means that conducting trial in such matters will be a futile activity and conclusions arrived at by the court, either without trial or with trial must be the same. It is not possible to give a list of cases fit for summary judgment and it is for the court to determine applicability of the same based on peculiar facts of a case. What can be said at the most is that in cases falling within Schedule 1 of small claims law, summary judgment will be necessarily rendered. It may be added that if provisions of discovery management are properly invoked, there will be greater scope for summary judgment.</p>
10	Don't you think that the new rules are aimed at bypassing the lawyers	Instead of bypassing the lawyers, the rules invariably insist on more participatory and consultative role of

	from the process of adjudication?	<p>lawyer's right from the first conference aimed at exploring facts of the case till the trial management. It needs clarification that examination of the parties may be through the lawyers and it is not with the purpose of extracting admissions but for clarifying the pleadings. The rules partake the situation of lawyer's engagement in various courts, resulting in frequent adjournment and haphazard trials, adding to the miseries of the litigants and equally that of the lawyers. At the stage of trial management conference, the court enquires the parties and their lawyer of their availability and readiness to give evidence, whenever possible but within the period of one year. What is ensured is that when the trial activity starts, it will proceed from day-to-day. Again an eventuality may arise, that despite the scheduled activity either the parties or the lawyers are absent for some pre-occupation beyond their control and in that situation the case is automatically fixed to the next date within scheduled time span.</p>
<b>11</b>	Are the case management rules not against the Right to Fair Trial?	<p>Rules are not against the right to fair trial. The rules before framing the issues impress on the inquisitorial role of the court to dig out the real controversy. If afterwards, the trial is needed; all principles of natural justice and fair trial are followed. Rather more, the new rules, emphasize on consultative process of the lawyers before framing of issues as well as after framing of issues and by involving actively the parties and lawyers in fixing the schedule, the principle of fair trial are followed in letter and spirit. Necessary to emphasize that the rules were enacted keeping in view</p>



		the best practices universally followed in case management.
<b>12</b>	Will the time taken in trial be not doubled by holding a mini trial before issues?	In most of the cases, after properly following the procedure of discovery management, the trial may not be needed at all. However, if at all the trial is needed, that would be a properly managed activity. As a whole, trial period will be much curtailed as against the apprehension of double trial. It needs to be mentioned that there will be no room for frivolous litigation to make its way to the trial.
<b>13</b>	How it would be possible to give direction to <i>Patwari</i> to produce relevant record at the stage of case management conference?	The court is empowered by Section 30, CPC read with Order 9A to Rule 1(VII) to issue any directions to ensure that trial of case proceeds quickly and efficiently.
<b>14</b>	Describe the effectiveness of blocking the NIC of judgment debtor in execution of decree?	It is obvious that blocking NIC of judgment debtor must be every effective method for execution of the decree. With his NIC blocked the judgment debtor will be facing definite difficulties in the ordinary run of life such as travel, operating bank accounts etc. In the near future as the NIC will be expectedly linked by NADRA with every facility, difficulties of the judgment debtor will be further increased, compelling him for execution of the decree.
<b>15</b>	Is it possible to conduct the examination of parties through lawyer?	It is quite possible. Order 10 CPC, is itself clear about the same by specifying the party or its pleader.
<b>16</b>	Explain the practicability of following the rules in view of huge pendency of cases?	Vigorous enforcement of rules, with huge pendency at the outset may be a problem. But as the court starts properly managing the cases by fixing an appropriate time schedule on the diary, particularly the trial

		management, the difficulties will be over, hopefully within a short span of time.
<b>17</b>	Would it not be contradictory to the principles of natural justice to dismiss the suit in the event of incorrect address of the defendant in terms of order 7 Rule 21, CPC?	It would be certainly not unfair as the rule speaks about the deliberate mentioning of wrong address in order to mislead the court. It may be mentioned that dismissal of the suit for failure to furnish address was already covered by Order 7, Rule 21, CPC.
<b>18</b>	Are the case management rules applicable in the family cases?	Section 17 of Family Court Act, excludes the applicability of the civil procedure code except Section 10 and 11 of the CPC. By virtue of this, case management rules are stricto sensu not applicable. But there is nothing to debar the trial court from applying the spirit of the rules, be it by the active management of the case before trial or properly scheduling the trial afterwards.
<b>19</b>	Whether the case management rules are applicable to civil appeals?	It is clear from Order 9-A Rule 1, CPC, that rules are applicable to the appeal, as much as they are applicable to plaint and petition. However, what course is to be followed will depend on facts and circumstances of the case. Thus the appellate court proceedings may require a case management at pre-admission stage, in deciding miscellaneous applications or fixing time schedule for arguments.
<b>20</b>	Whether the Case Management rules are applicable to special statutes cases, such as land acquisition, removal of encroachment or to exercise of summary jurisdiction under Order 37 CPC?	In case of specific exclusion of CPC, embraced by the special statute, the court may follow the spirit or the substance of the court management rules. In all other cases the courts are bound to follow the case management rules.

21	How can the agenda of case management conference be served before appearance of defendant?	Agenda of the first conference is to be served after appearance of the defendant. It is necessary to mention that the concept of case management does not necessarily arise at appearance of the defendants. It carries a much broader scope and requires the proactive role of the court. This necessitates that on receiving the plaint, the court shall be bound to scrutinize the plaint for assessing maintainability of the suit, question of jurisdiction, valuation for the purpose of court fee etc. Furthermore, the court will be performing the much needed role of assessing whether it is a case where the ordinary summon is to be issued or summon for final disposal.
22	Are the case management rules applicable in the Malakand region?	Except as otherwise provided by Nizam-e-Adl Regulation, the rules are applicable being part and parcel of civil procedure code. It needs no emphasis that timelines given in the Regulation are to be followed being special law, notwithstanding anything contained in these rules, though it is possible to harmonize the two statutes. As for instance scheduling the trial within the period of 06 months will meet the objective both of Nizam-e-Adl Regulation and Case Management Rules.
23	Would it be possible to manage the trial on day-to-day basis, considering the difficulties of the litigants and lawyers?	What needs clarification at the outset is that there is no scheduling of the dates for the purpose of trial but the scheduling of the event. As an example, the trial is fixed to commence from 1 <sup>st</sup> March, ending on 15 <sup>th</sup> March, with day to day proceeding. With this setting in mind, it is clarified that the trial as event activity, is always scheduled based on willingness and preparedness of the parties and the lawyers.

		Again if on the scheduled day, either the lawyer or party is absent because of some engagement beyond their control, the case will automatically shifted to the following date in a sequence.
24	Would it be practically possible to file all misc. applications at one time, as envisioned by the rules?	It must be understood that new rules visualize a very proactive role of the court, requiring the judge to thoroughly study the case from the beginning. In doing so, the parties and their lawyers are also involved by the judge, so as to be aware of each other's case/pleadings, documents, from the very beginning. This happens at first conference. When this is the situation, it is not only possible but mandated that all applications will be moved, entertained and decided at one time. That certainly has the singular advantage of stopping frivolous miscellaneous applications at the stage of the trial.
25	Is there anything in the rules to address the problem of attendance of the parties swiftly and thus reducing the period of trial?	The case management rules are addressing this problem in a number of ways. First electronic modes of summons have been introduced. Secondly there greater check on filing incorrect address. Thirdly at the case management conference, which conference may be convened on the availability of plaintiff and even a single defendant, the judge gets to know what are the other parties affected by the case and proper addresses may be ascertain from the parties in appearance.
26	Are the rules applicable to pending cases?	The rules are applicable to the pending case which is made clear by Order 9-A Rule 7, CPC. It needs emphasis that in applying this provision, the wisdom of the trial judge is required. As for instance in a case fixed for defendant evidence, the conference needed if at all may be for trial management. Alternatively the

		reasons may be recorded that because of the stage of the case, it is not warranted to convene the different conferences specified by the new rules.
27	Will you explain scope and importance of proviso to Rule 3, Order 15A (Summary Judgment)?	Broadly the summary judgment is applied in two areas. One where there are no triable issues involved. The second, where there is no real prospect of a party succeeding on such claim(s) or successfully defending such claim(s). The later situation is of much broader scope. In order to balance this situation, so that rights of the party asking for trial are not defeated by too much latitude given to the words, "no real prospect or succeeding", the proviso was added.

## Conclusion:

- An effort was made to give a proper conceptual insight to all the participants. However, since the judges were minimally applying rules so far, it would be necessary to continue the training activities as a regular phenomena, which on the one hand will bring further clarity and understanding and on other hand will throw light on the effectualness of the rules.
- There was a general consensus of the participants on the effectiveness of the new rules. In particular from the bar President District bar Association, Mansehra spoke high of their effectiveness and assured full cooperation. More or less same were the feelings of the lawyers at Haripur and Buner. In Abbottabad, however, most of the practicing lawyers were absent, whereas at Malakand, the lawyers were more emphatic in raising voice against the bar of appeal/revision and the bar of interlocutory applications at the stage of trial.
- The broader objective in putting a clog on appeals/ revisions against interlocutory orders in the rules was of course to focus on the trial and its timely completion. There can be no two opinions that one of easiest and widely practiced tactic of delaying the trials is to

challenge the interlocutory applications and to carry this phenomena right to Supreme Court. However, in order to allay the grievances of the bar, it is possible that right of revision only may be opened. This may be a palliative, because it will open up the right to reach a higher forum in appropriate cases, but will not delay the trial. Understandably courts exercising revision petition are not required to requisition record of the lower courts and similarly the scope of interference with the order of lower courts is circumscribed.

- Grievance about barring interlocutory applications at the stage of trial is not genuine. Such applications have been only barred where a party though knowing a particular situation did not move an application at an appropriate stage. The rules clearly contain an element of vigilance and estoppel. Before enforcement of the new rules also, interlocutory applications could be dismissed during trial by the courts applying principle of estoppel and vigilance. One may not lose sight of the fact that international best practices have gone a-way forward assessing interlocutory applications at trial stage and in general following different standards have evolved.

- The point litigation has reached
- The prejudice to respondent if leave is granted
- the prejudice to other litigants and efficient use of court resources
- applicants explanation for the delay
- Need to maintain public confidence in judicial system

(Recasting the landscape of interlocutory applications: Aon Risk Services Australia limited Vs Australian National University, Lyons, Alicia)

- Some hype was created also on the production and admissibility of documents at the preliminary stage/ before framing of issues. Order 13 CPC is clear that documents have to be produced and their admissibly judged before framing of issues. This is not something which new rules have introduced and it was already mandated by the CPC. The utility of applying the provision is not far to seek. It admirably checks the pace of trial, the parties are not taken by surprise about the documents and the court is also fully conversant on what to frame issues and on what issues the trial will be held. Of course there is a difficulty of procuring the certified copies of public documents. But this does not justify overlooking clear provision of Order 13 CPC. The difficulty can be overcome by setting

right the regime of obtaining the certified copied, for which the Academy also looks in future for coordinating with the government departments and making the process easier and swifter. At the same time participants were apprised during the training session that court may facilitate the parties and the lawyers by calling the Patwari in the first case management conference and directing him to produce all the relevant record needed in the case by the time court reached the stage of discovery management.

- Some opinions were also expressed that courts will be unnecessarily involving themselves in the conferences, which will ultimately defeat the objective of timely completion of the trial and further delay the proceedings. That goes for erroneous thinking. The conferences are short activity, meant only for making aware the court and the parties of the facts of the case right from the beginning and when such awareness is gained, it is natural that trial will be properly managed activity. Rather more, in number of cases trials may not be needed at all and parties may be getting the desired relief through summary judgment.

## Schedule of Activities

Training Schedule of District Judiciary & District Bar on C.P.C Management Rules, 2018			
S.No	Name of District	Resource Persons	Date & Time of Training
1	Kohistan Upper	Mr. Jehanzaib Shinwari, Judge Consumer Court Bannu	26-11-2018 at 01:30 PM
	Kohistan Lower		27-11-2018 at 01:30 PM
	Kolai Palas, Kohistan		28-11-2018 at 01:30 PM
	Battagram		29-11-2018 at 01:30 PM
	Torghar		30-11-2018 at 01:30 PM
2	Chitral	1. Mr. Sohail Sheraz Noor Sani, Dean KPJA 2. Mr. Amjad Zia Sidiqqi, Director Regulation PHC	26-11-2018 at 01:30 PM
	DIR Upper		27-11-2018 at 01:30 PM
	DIR Lower		28-11-2018 at 01:30 PM
	Swat		29-11-2018 at 01:30 PM
	Shangla		30-11-2018 at 01:30 PM
3	Mansehra	Mr. Ahmad Iftikhar, Director Instruction, KPJA Mr. Zia-Ur-Rehman, Director Research & Publications, KPJA	26-11-2018 at 01:30 PM
	Abbottabad		27-11-2018 at 01:30 PM
	Haripur		28-11-2018 at 01:30 PM
	Malakand (Batkheila)		29-11-2018 at 01:30 PM
	Buner		30-11-2018 at 01:30 PM
4	Peshawar	Khwaja Wajeed-ud-Din, Registrar PHC Mr. Mohamad Zeb Khan, PSO HCJ PHC	26-11-2018 at 01:30 PM
	Mardan		27-11-2018 at 01:30 PM
	Swabi		28-11-2018 at 01:30 PM
	Charsadda		29-11-2018 at 01:30 PM
	Nowshera		30-11-2018 at 01:30 PM
5	DI Khan	Mr. Kaleem Arshad Khan, DSJ Mansehra	26-11-2018 at 01:30 PM
	Tank		27-11-2018 at 01:30 PM
	Lakki Marwat		28-11-2018 at 01:30 PM
	Bannu		29-11-2018 at 01:30 PM
	Karak		30-11-2018 at 01:30 PM
	Kohat		01-12-2018 at 01:30 PM
	Hangu		01-12-2018 at 01:30 PM
<b>Class Duration: 90 Minutes</b>		<b>Question &amp; Answers: 30 Minutes</b>	



## **Photographs**

**Consultative Session with Judges, District Mansehra**

**Session with the members of Bench & Bar, District Mansehra**

### **Consultative Session with Judges, District Abbottabad**



### **Session with the members of Bench & Bar, District Haripur**



**Session with the members of Bench & Bar, District Haripur**



**Session with the members of Bench & Bar, District Haripur**

**Consultative Session with Judges, District Malakand**

**Session with the members of Bench & Bar, District Malakand**





**Consultative Session with Judges, District Buner**



**Session with the members of Bench & Bar, District Buner**