

# The Code of Civil Procedure, 1908

UNION OF INDIA

India

## The Code of Civil Procedure, 1908

### Act 5 of 1908

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1. [Amended by The Code Of Civil Procedure (Amendment) Act, 1956 (Act 66 of 1956) on 1 January 1956]
2. [Amended by The Code Of Civil Procedure (Amendment) Act, 2002 (Act 22 of 2002) on 1 January 2002]

**The Code of Civil Procedure, 1908**(5 of 1908)[21st March, 1908]1. This Act has been amended in its application to Assam by Assam Acts 2 of 1941 and 3 of 1953; to Tamil Nadu by Madras Act 34 of 1950, Madras A.O. 1950, and Tamil Nadu Act 15 of 1970; to Punjab by Punjab Act 7 of 1934; to Uttar Pradesh by U.P. Acts 4 of 1925, 35 of 1948, 24 of 1954, 17 of 1970, 57 of 1976 and 31 of 1978; to Karnataka by Mysore Act 14 of 1955; to Kerala by Kerala Act 13 of 1957; to Rajasthan by Rajasthan Act 19 of 1958; to Maharashtra by Maharashtra Act 22 of 1960 and 25 of 1970; It has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and, by notification under ss. 5 and 5A of the Schedule Districts Act, 1874 (14 of 1874), also to the following Scheduled Districts :—(1) The district of Jalpaiguri, Cachar (excluding the North Cachar Hills Goalpara (including the Eastern Duars), Kamrup, Darrang, Nowgong (excluding the Mikir Hill Tracts) Sibsagar (excluding the Mikir Hill Tracts) and Lakhimpur (excluding the Dibrugarh Frontier Tracts) : Gazette of India, 1909, Pt. 1. p. 5 and ibid, 1914, Pt I, p. 1690.(2) The District of Darjeeling and the District of Hazaribagh, Ranchi, Palamau and Manbhum in Chota Nagpur : Calcutta Gazette, 1909, Pt. I, p. 25 and Gazette of India, 1909, Pt. I, p. 33.(3) The Province of Kumaon and Garhwal and the Tarai Parganas (with modifications) : U.P. Gazette, 1909, Pt. I, p. 3 and Gazette of India, 1909, Pt. I, p. 31.(4) The Pargana of Jaunsar-Bawar in Dehradun and the Scheduled portion of the Mirzapur District : U.P. Gazette, 1909, Pt. I, p. 4 and Gazette of India, 1909, Pt. I, p. 32.(5) Coorg : Gazette of India, 1909, Pt. I, p. 32.(6) Scheduled Districts in the Punjab : Gazette of India, 1909, Pt. I, p. 33.(7) Sections 36 to 43 to all the Scheduled Districts in Madras, Gazette of India, 1909, Pt. I. p. 152.(8) Scheduled Districts in the C.P., except so much as is already in force and so much as authorizes the attachment and sale of immovable property in execution of a decree, not being a decree directing the sale of such property : Gazette of India, 1909, Pt. I, p. 239.(9) Ajmer-Merwara except ss. 1 and 155 to 158: Gazette of India, 1909, Pt. II, p. 480.(10) Pargana Dhalbhum, the Municipality of Chaibassa in the Kolhan and the Porahat Estate in the District of Singhbhum : Calcutta, Gazette of India, 1909, Pt. I, p. 453 and Gazette of India, 1909. Pt. I, p. 443. Under s. 3(3)(a) of the Sonthal Parganas Settlement Regulation (3 of 1872), ss. 38 to 42 and 156 and rules 4 to 9 in Order XXI in the First Schedule have been

declared to be in force in the Sonthal Parganas and the rest of the Code for the trial of suits referred to in s. 10 of the Sonthal Parganas Justice Regulation, 1893 (5 of 1893) : see Calcutta, Gazette, 1909, Pt. I, p. 45. it has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch. and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch. It has been extended to the District of Koraput and Ganjam Agency by Orissa Regulation, (5 of 1951) s.2. It has been extended to the State of Manipur (w.e.f. 1-1-1957) by Act 30 of 1950, s. 3 to the whole of the Union Territory of Lakshadweep (w.e.f. 1-10-1967) by Regulation 8 of 1965, s. 3 and Sch. : to Goa, Daman and Diu (w.e.f. 15-6-1966) by Act 30 of 1965, s. 3; to Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and Sch. 1 and to the State of Sikkim (w.e.f. 1-9-1984), vide Notification No. S.O. 599 (E), dated 13-8-1984, Gazette of India Extraordinary., Part. II, s. 3 An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature Whereas it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; it is hereby enacted as follows:-**Preliminary**

## 1. Short title, commencement and extent .-

(1) This Act may be cited as The Code of Civil Procedure, 1908. (2) It shall come into force on the first day of January, 1909. (3) [ It extends to the whole of India except-(a) the [\*\*\*]; (b) the State of Nagaland and the tribal areas: Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification. Explanation .-In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution. (4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.]

## 2. Definitions .-

In this Act, unless there is anything repugnant in the subject or context, -(1) "Code" includes rules; (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [\* \* \*] section 144, but shall not include-(a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Explanation .-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final; (3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made; (4) "district" means the local limits of the jurisdiction of a principal Civil Court of original

jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court;(5)[ "foreign Court" means a Court situate outside India and not established or continued by the authority of the Central Government;] [ Substituted by Act 2 of 1951, Section 4, for the original clause.](6)"foreign judgment" means the judgment of a foreign Court;(7)"Government Pleader" includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader;(7A)[ "High Court", in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;(7B)"India", except in sections 1, 29, 43, 44, [44A] [ Inserted by Act 2 of 1951, Section 4.], 78, 79, 82, 83 and 87-A, means the territory of India excluding the State of Jammu and Kashmir;](8)"Judge" means the presiding officer of a Civil Court;(9)"Judgment" means the statement given by the Judge on the grounds of a decree or order;(10)"judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made;(11)"legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;(12)" mesne profits " of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;(13)"movable property" includes growing crops;(14)"order" means the formal expression of any decision of a Civil Court which is not a decree;(15)"pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;(16)"prescribed" means prescribed by rules;(17)"public officer" means a person falling under any of the following descriptions, namely:-(a)every Judge;(b)every member of [an All-India Service] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 3, for " the Indian Civil Service" (w.e.f. 1.2.1977). ];(c)every commissioned or gazetted officer in the military, [naval or air] [Substituted by Act 35 of 1934, Section 2 and Sch., for " or naval" . ] forces of [the Union] [Substituted by A.O. 1950, for " His Majesty" . ] [\* \* \*] [The words " including His Majesty's Indian Marine Service" omitted by Act 35 of 1934, Section 2 and Sch. ](d)every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;(e)every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;(f)every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;(g)every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and(h)every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;(18)"rules" means rules and forms contained in the First Schedule or made under section 122

or section 125;(19)"share in a corporation" shall be deemed to include stock, debenture-stock, debentures or bonds; and(20)"signed", save in the case of a judgment or decree, includes stamped.[\* \* \*] [Clause (21), definition of " States" inserted by A.O. 1950 and omitted by Act 2 of 1951, Section 4. ]

### **3. Subordination of Courts .-**

For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade, inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

[MAHARASHTRA].- In section 3 of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (Mah. LXI of 2018), for clause (1), the following clause shall be Substituted namely. -"(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (Mah. LXI of 2018), (hereinafter, in this section, referred to as "the Amendment Act"), the said issue shall be decided and disposed of by the Court under section 9A, as if the said section 9A has not been deleted;"

### **4. Savings .-**

(1)In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.(2)In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

### **5. Application of the Code to Revenue Courts .-**

(1)Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government [\* \* \*] may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government [\* \* \*] [The words " with the sanction aforesaid" omitted by Act 38 of 1920, Section 2 and Sch. I, Pt. I. ] may prescribe.(2)"Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

## **6. Pecuniary jurisdiction .-**

Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

## **7. Provincial Small Cause Courts .-**

The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887), [or under the Berar Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act or Law] [Substituted by Act 4 of 1941, Section 2 and Sch. III, for " under that Act". ], [or to Courts in [any part of India to which the said Act does not extend] [Inserted by Act 2 of 1951, Section 5. ] exercising a corresponding jurisdiction], that is to say,-(a)so much of the body of the Code as relates to-(i)suits excepted from the cognizance of a Court of Small Causes;(ii)the execution of decrees in such suits;(iii)the execution of decrees against immovable property; and(b)the following sections, that is to say,-section 9, sections 91 and 92, sections 94 and 95 [so far as they authorize or relate to-(i)orders for the attachment of immovable property;(ii)injunctions;(iii)the appointment of a receiver of immovable property; or(iv)the interlocutory orders referred to in clause (e) of section 94], andsections 96 to 112 and 115.

## **8. Presidency Small Cause Courts .-**

Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, [77, 157 and 158] [Substituted by Act 1 of 1926, Section 3, for " so far as they relate to injunctions and interlocutory orders" . ], and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay:[Provided that-(1)the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the Official Gazette, [direct] [Added by Act 1 of 1914, Section 2. ] that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882 (15 of 1882), and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court;(2)all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882 (15 of 1882), shall be deemed to have been validly made.]

## **Part I – SUITS IN GENERAL**

### **Jurisdiction of the Courts and res judicata**

## **9. Courts to try all civil suits unless barred .-**

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Explanation [I] .-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. [ Explanation II .-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place. ] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 5 (w.e.f. 1.2.1977). ]

## **10. Stay of suit .-**

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] [Substituted by Act 2 of 1951, Section 3, for " the States" . ] established or continued by [the Central Government] [Substituted by A.O. 1937, for " the G.G. in C." . ] [\* \* \*] [The words " or the Crown Representative" omitted by A.O. 1948. ] and having like jurisdiction, or before [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty in Council" . ]. Explanation .-The pendency of a suit in a foreign Court does not preclude the Courts in [India] [Substituted by Act 2 of 1951, Section 3, for " the States" . ] from trying a suit founded on the same cause of action.

## **11. Res judicata .-**

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Explanation I .-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto. Explanation II .-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court. Explanation III .-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other. Explanation IV .-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Explanation V .-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused. Explanation VI .-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. [ Explanation VII .-The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former

suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree. Explanation VIII .-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

## **12. Bar to further suit .-**

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

## **13. When foreign judgment not conclusive .-**

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-(a)where it has not been pronounced by a Court of competent jurisdiction;(b)where it has not been given on the merits of the case;(c)where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [India] in cases in which such law is applicable;(d)where the proceedings in which the judgment was obtained are opposed to natural justice;(e)where it has been obtained by fraud;(f)where it sustains a claim founded on a breach of any law in force in India.

## **14. Presumption as to foreign judgments .-**

The Court shall presume, upon the production of any document purporting to be a certified copy of, a foreign judgment, that such judgment was pronounced by a Court of, competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.**Place of suing**

## **15. Court in which suits to be instituted .-**

Every suit shall be instituted in the Court of the lowest grade competent to try it.

## **16. Suits to be instituted where subject-matter situate .-**

Subject to the pecuniary or other limitations prescribed by any law, suits-(a)for the recovery of immovable property with or without rent or profits,(b)for the partition of immovable property,(c)for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,(d)for the determination of any other right to or interest in immovable property,(e)for compensation for wrong to immovable property,(f)for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose

jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Explanation .- In this section "property" means property situate in [India].

## **17. Suits for immovable property situate within jurisdiction of different Courts .-**

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

## **18. Place of institution of suit where local limits of jurisdiction of Courts are uncertain .-**

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction: Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction. (2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

## **19. Suits for compensation for wrongs to person or movables .-**

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

## **20. Other suits to be instituted where defendants reside or cause of, action arises .-**

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-(a) the defendant, or each of the defendants where there are more than one, at



the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or(b)any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or(c)the cause of action, wholly or in part, arises.[\* \* \*][ Explanation ] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 7, for " Explanation II" (w.e.f. 1.2.1977). ]-A corporation shall be deemed to carry on business at its sole or principal office in [India] [Substituted by Act 2 of 1951, Section 3, for " the States" . ] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

## **21. Objections to jurisdiction .-**

(1)[No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.](2)[ No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.(3)No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 8 (w.e.f. 1.2.1977). ]

### **21A. Bar on suit to set aside decree on objection as to place of suing**

No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.Explanation .-The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.]

## **22. Power to transfer suits which may be instituted in more than one Court .-**

Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

### **23. To what Court application lies .-**

(1)Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.(2)Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.(3)Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

### **24. General power of transfer and withdrawal .-**

(1)On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage-(a)transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or(b)withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and(i)try or dispose of the same; or(ii)transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or(iii)re-transfer the same for trial or disposal to the Court from which it was withdrawn.(2)Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.(3)[ For the purposes of this section,-(a)Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;(b)"proceeding" includes a proceeding for the execution of a decree or order.](4)The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.(5)[ A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 10 (w.e.f. 1.2.1977). ]

### **25. [ Power of Supreme Court to transfer suits, etc**

(1)On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.(2)Every application under this section shall be made by a motion which shall be supported by an affidavit.(3)The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.(4)In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.(5)The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to

such suit, appeal or proceeding.] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 10, for sub-Section (3) (w.e.f. 1.2.1977).]**Institution of suits**

## **26. Institution of suits .-**

(1)Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.(2)[ In every plaint, facts shall be proved by affidavit.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 2 (w.e.f. 1.7.2002). ]**Summons and discovery**

## **27. Summons to defendants .-**

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed [on such day not beyond thirty days from date of the institution of the suit.]

## **28. Service of summons where defendant resides in another State .-**

(1)A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.(2)The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.(3)[ Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record,(a)in Hindi, where the language of the Court issuing the summons is Hindi, or(b)in Hindi or English where the language of such record is other than Hindi or English, shall also be sent together with the record sent under that sub-section.]

## **29. [ Service of foreign summonses**

Summonses and other processes issued by-(a)any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or(b)any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or(c)any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.]

## **30. Power to order discovery and the like .-**

Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-(a)make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;(b)issue summonses to persons whose

attendance is required either to give evidence or to produce documents or such other objects as aforesaid;(c)order any fact to be proved by affidavit.

### **31. Summons to witness .-**

The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

### **32. Penalty for default .-**

The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may-(a)issue a warrant for his arrest;(b)attach and sell his property;(c)impose a fine upon him [not exceeding five thousand rupees];(d)order him to furnish security for his appearance and in default commit him to the civil prison.Judgment and decree

### **33. Judgment and decree .-**

The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.**Interest**

### **34. Interest .-**

(1)Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. per annum, as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.Explanation.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 13 (w.e.f. 1.2.1977). ](2)Where such a decree is silent with respect to the payment of further interest [on such principal sum] [Substituted by Act 66 of 1956, Section 2, for certain words. ] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.**Costs**

## **35. Costs .-**

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers. (2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing. [\* \* \*]

## **35. Costs.— [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015)]**

(1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine: (a) whether costs are payable by one party to another; (b) the quantum of those costs; and (c) when they are to be paid. Explanation.—For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—(i) the fees and expenses of the witnesses incurred; (ii) legal fees and expenses incurred; (iii) any other expenses incurred in connection with the proceedings. (2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party: Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing. Illustration The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious. In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages. (3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—(a) the conduct of the parties; (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; (c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case; (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and (e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court. (4) The orders which the Court may make under this provision include an order that a party must pay—(a) a proportion of another party’s costs; (b) a stated amount in respect of another party’s costs; (c) costs from or until a certain date; (d) costs incurred before proceedings have begun; (e) costs relating to particular steps taken in the proceedings; (f) costs relating to a distinct part of the proceedings; and (g) interest on costs from or until a certain date.

## **35A. [Compensatory costs in respect of false or vexatious claims or defences]**

(1) If in any suit or other proceeding, [including an execution proceeding but [excluding an appeal or a revision],] any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has

been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, [if it so thinks fit] [Substituted by Act 66 of 1956, Section 4, for certain words. ], may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.(2)No Court shall make any such order for the payment of an amount exceeding [three thousand rupees] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 14, for " one thousand rupees" (w.e.f. 1.2.1977).] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887), [or under a corresponding law in force in [any part of India to which the said Act does not extend] [Inserted by Act 2 of 1951, Section 7. ] and not being a Court constituted [under such Act or law] [Substituted by Act 2 of 1951, Section 7, for " under that Act" . ], are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.(3)No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.(4)The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

### **35B. Costs for causing delay**

(1)If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit-(a)fails to take the step which he was required by or under this Code to take on that date, or(b)obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of-(a)the suit by the plaintiff, where the plaintiff was ordered to pay such costs,(b)the defence by the defendant, where the defendant was ordered to pay such costs.Explanation .-Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.(2)The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.]

## **Part II – Execution**

### **General**

#### **36. [ Application to orders**

The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).]

#### **37. Definition of Court which passed a decree**

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-(a)where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and(b)where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.[ Explanation .-The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]**Courts by which decrees may be executed**

#### **38. Court by which decree may be executed .-**

A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

#### **39. Transfer of decree .-**

(1)The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court [of competent jurisdiction],-(a)if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or(b)if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or(c)if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or(d)if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.(2)The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.(3)[ For the purposes of this section, a Court shall be

deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 18 (w.e.f. 1.2.1977). ](4)[ Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 2 (w.e.f. 1.7.2002). ]

#### **40. Transfer of decree to Court in another State .-**

Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.

#### **41. Result of execution proceedings to be certified .-**

The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

#### **42. Powers of Court in executing transferred decree .-**

(1)The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.(2)[ Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:-(a)power to send the decree for execution to another Court under section 39;(b)power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;(c)power to order attachment of a decree.(3)A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.(4)Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:-(a)power to order execution at the instance of the transferee of the decree;(b)in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.]

#### **43. [ Execution of decrees passed by Civil Courts in places to which this Code does not extend**

Any decree passed by any Civil Court established in any part of India to which the provisions of this Code do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court



in the territories to which this Code extends.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 19 (w.e.f. 1.2.1977). ]

#### **44. [ Execution of decrees passed by Revenue Courts in places to which this Code does not extend**

The State Government may, by notification in the Official Gazette, declare that the decrees of any Revenue Court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State.]

#### **44A. [Execution of decrees passed by Courts in reciprocating territory**

(1)Where a certified copy of a decree of any of the superior Courts of [\* \* \*] any reciprocating territory has been filed in a District Court, the decree may be executed in [India ] [Substituted by Act 2 of 1951, Section 3, for " the States" . ]as if it had been passed by the District Court.(2)Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.(3)The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.[ Explanation I .-"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.Explanation II .-"Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.] [Substituted by Act 71 of 1952, Section 2, for Explanations 1 to 3. ]

#### **45. [ Execution of decrees outside India**

So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established [\* \* \*] by the authority of the Central Government [outside India] [ Substituted by A.O. 1950, for " in any Indian State" .] to which the State Government has by notification in the Official Gazette declared this section to apply.]

#### **46. Precepts .-**

(1)Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to

attach any property belonging to the judgment-debtor and specified in the precept.(2)The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.Questions to be determined by Court executing decree

#### **47. Questions to be determined by the Court executing decree .-**

(1)All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.[\* \* \*](3)Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.[ Explanation I .-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.Explanation II .-(a)For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and(b)all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section. ]Limit of time for execution

#### **48. Execution barred in certain cases .-**

[ Repealed by the Limitation Act, 1963 (36 of 1963), section 28 (w.e.f. 1-1-1964).]Transferees and legal representatives

#### **49. Transferee .-**

Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

#### **50. Legal representative .-**

(1)Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.(2)Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.**Procedure in execution**

**51. Powers of Court to enforce execution .-Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-**

(a)by delivery of any property specifically decreed;(b)by attachment and sale or by sale without attachment of any property;(c)by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;](d)by appointing a receiver; or(e)in such other manner as the nature of the relief granted may require:[Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-(a)that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-(i)is likely to abscond or leave the local limits of the jurisdiction of the Court, or(ii)has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or(b)that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or(c)that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.Explanation .-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.] [Inserted by Act 21 of 1936, Section 2. ]

**52. Enforcement of decree against legal representative .-**

(1)Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.(2)Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

**53. Liability of ancestral property .-**

For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

## 54. Partition of estate or separation of share .-

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.**Arrest and detention**

## 55. Arrest and detention .-

(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained: Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise: Provided, secondly, that, no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found: Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest: Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him. (2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf. (3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he [may be discharged] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 20, for the former Explanation (w.e.f. 1.2.1977).] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force. (4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court [may release] [Substituted by Act 3 of 1921, Section 2, for "shall release"] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree.

## **56. Prohibition of arrest or detention of women in execution of decree for money .-**

Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

## **57. Subsistence allowance .-**

The State Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

## **58. Detention and release .-**

(1)Every person detained in the civil prison in execution of a decree shall be so detained,—(a)where the decree is for the payment of a sum of money exceeding [[five thousand rupees], for a period not exceeding three months, and,](b)[where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.](1A)For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed [two thousand rupees.](2)A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

## **59. Release on ground of illness .-**

(1)At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.(2)Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.(3)Where a judgment-debtor has been committed to the civil prison, he may be released therefrom-(a)by the State Government, on the ground of the existence of any infectious or contagious disease, or(b)by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.(4)A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.**Attachment**

## **60. Property liable to attachment and sale in execution of decree .-**

(1)The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may

exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf: Provided that the following particulars shall not be liable to such attachment or sale, namely:-(a)the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;(b)tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;(c)houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to [an agriculturist or a labourer or a domestic servant]and occupied by him;(d)books of account;(e)a mere right to sue for damages;(f)any right of personal service;(g)stipends and gratuities allowed to pensioners of the Government or of a local authority [or of any other employer] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23 (w.e.f. 1.2.1977).], or payable out of any service family pension fund [notified] [For such a notification, see Gazette of India, 1909, Pt. I, p. 5.] in the Official Gazette by [the Central Government or the State Government] [ Substituted by A.O. 1937, for " the G.G. in C." .] in this behalf, and political pensions;(h)[ the wages of labourers and domestic servants, whether payable in money or in kind;] [Substituted by Act 9 of 1937, Section 2, for the former Clauses (h) and (i). The Amendments made by that Section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937; see *ibid*, Section 3.] [\* \* \*] [The words " and salary, to the extent of the first hundred rupees and one-half the remainder of such salary" omitted by Act 5 of 1943, Section 2.](i)[ salary to the extent of [the first [ [one thousand rupees] [Substituted by Act 5 of 1943, Section 2, for the former clause and proviso.] and two-thirds of the remainder][in execution of any decree other than a decree for maintenance:] [Inserted by Act 66 of 1956, Section 6.][Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or inter-mittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree;] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23, for the proviso (w.e.f. 1.2.1977).](ia)[ one-third of the salary in execution of any decree for maintenance;] [Inserted by Act 66 of 1956, Section 6.](j)[ the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23, for Clause (j) (w.e.f. 1.2.1977).](k)all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, [1925] [Substituted by Act 9 of 1937, Section 2, for " 1897" .] (19 of 1925), for the time being applies, in so far as they are declared by the said Act not to be liable to attachment;(ka)[ all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment; [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23 (w.e.f. 1.5.1977).](kb)all moneys payable under a policy of insurance on the life of the judgment-debtor;(kc)the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and

accommodation apply;](l)[ any allowance forming part of the emoluments of any [servant of the Government] [Substituted by Act 9 of 1937, Section 2, for the original clause, see also footnote 1.] or of any servant of a railway company or local authority which the [appropriate Government] [Substituted by A.O. 1937, for " G.G. in C." .] may, by notification in the Official Gazette, declare to be exempt from attachment, and any subsistence grant or allowance made to [any such servant] [ Substituted by Act 5 of 1943, Section 2, for " any such officer or servant" .] while under suspension;](m)an expectancy of succession by survivorship or other merely contingent or possible right or interest;(n)a right to future maintenance;(o)any allowance declared by [any Indian law] [Substituted by A.O. 1937, for " any law passed under the Indian Councils Act, 1861 and 1892" .] to be exempt from liability to attachment or sale in execution of a decree; and(p)where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.[ Explanation I .-The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23, for Explanation I (w.e.f. 1.2.1977).][ Explanation II .-In clauses (i) and (ia)] [Inserted by Act 9 of 1937, Section 2, for the former Clauses (h) and (i). The Amendments made by that Section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937, see *ibid*, Section 3.], ["salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.][Inserted by Act 9 of 1937, Section 2, for the former Clauses (h) and (i). The Amendments made by that Section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937, see *ibid*, Section 3.][ Explanation [III] [Inserted by A.O. 1937. ] .-In clause (l) "appropriate Government" means-(i)as respects any [person] [Substituted by Act 5 of 1943, Section 2, for " public officer" .] in the service of the Central Government, or any servant of [a Railway Administration] [Substituted by A.O. 1950, for " a Federal Railway" .] or of a cantonment authority or of the port authority of a major port, the Central Government;[\* \* \*] [Clause (ii) omitted by A.O. 1948.](iii)as respects any other servant of the Government or a servant of any other [\* \* \*] [The words " railway or" omitted by A.O. 1950.] local authority, the State Government.][Explanation IV [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23 (w.e.f. 1.2.1977).].-For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled, unskilled or semi-skilled labourer.Explanation V .-For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.Explanation VI .-For the purposes of Explanation V , an agriculturist shall be deemed to cultivate land personally, if he cultivates land-(a)by his own labour, or(b)by the labour of any member of his family, or(c)by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.](1A)[Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 23 (w.e.f. 1.2.1977).](2)Nothing in this section shall be deemed [\* \* \*] [The letter and brackets " (a), the word " or" and Clause (b) repealed by Act 10 of 1914, Section 3 and Sch. II.] to exempt houses and other buildings (with the materials and the

sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land [\* \*] [The letter and brackets " (a), the word " or" and Clause (b) repealed by Act 10 of 1914, Section 3 and Sch. II.].[\* \* \*] [The letter and brackets " (a), the word " or" and Clause (b) repealed by Act 10 of 1914, Section 3 and Sch. II.]

## **61. Partial exemption of agricultural produce .-**

The State Government [\* \* \*] may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

## **62. Seizure of property in dwelling-house .-**

(1)No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.(2)No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.(3)Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

## **63. Property attached in execution of decrees of several Courts .-**

(1)Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.(2)Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.[ Explanation .-For the purposes of sub-section (2), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.]



#### **64. Private alienation of property after attachment to be void .-**

(1)[Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.](2)[ Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.] [Inserted by the Code of Civil Procedure (Amendment) Act, 2002, Section 3 (w.e.f. 1.7.2002).]Explanation .-For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.**Sale**

#### **65. Purchaser's title .-**

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

#### **66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff .-**

[ Repealed by the Benami Transactions (Prohibition) Act , 1988, section 7 (w.e.f.19-5-1988).]

#### **67. Power for State Government to make rules as to sales of land in execution of decrees for payment of money .-**

(1)The State Government [\* \* \*] [The words " with the previous sanction of the G.G. in C." omitted by Act 38 of 1920, Section 2 and Sch. I, Pt. I.] may, by notification in the Official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the State Government, to make it impossible to fix their value.(2)[ When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the State Government may, by notification in the Official Gazette, declare such rules to be in force, or may ] [Added by Act 1 of 1914, Section 3. ][\* \* \*] [The words " with the previous sanction of the G.G. in C." omitted by Act 38 of 1920, Section 2 and Sch. I, Pt. I.] [by a like notification, modify the same.Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.] [Added by Act 1 of 1914, Section 3. ](3)[ Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.] [Inserted by Act 20 of 1983, Section 2 and Sch. (w.e.f. 15.3.1984).]**Delegation to Collector of power to execute decrees against immovable property**

## **68. to 72**

[ Repealed by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), section 7 (w.e.f.1-1-1957).]**Distribution of assets**

### **73. Proceeds of execution-sale to be rateably distributed among decree-holders .-**

(1)Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:Provided as follows:-(a)where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;(b)where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;(c)where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied-first, in defraying the expenses of the sale;secondly, in discharging the amount due under the decree;thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); andfourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.(2)Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.(3)Nothing in this section affects any right of the Government.**Resistance to execution**

### **74. Resistance to execution .-**

Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

## **Part III – Incidental Proceedings**

### **Commissions**

## **75. Power of Court to issue commissions .-Subject to such conditions and limitations as may be prescribed, the Court may issue a commission-**

(a)to examine any person;(b)to make a local investigation;(c)to examine or adjust accounts; or(d)to make a partition;(e)[ to hold a scientific, technical, or expert investigation;(f)to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;(g)to perform any ministerial act.]

## **76. Commission to another Court .-**

(1)A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.(2)Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

## **77. Letter of request .-**

In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within [India.]

## **78. Commissions issued by foreign Courts**

Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of-(a)Courts situate in any part of India to which the provisions of this Code do not extend; or(b)Courts established or continued by the authority of the Central Government outside India; or(c)Courts of any State or country outside India.]

# **Part IV – Suits In Particular Cases**

## **Suits by or against the Government or Public Officers in their official capacity**

## **79. Suits by or against Government**

[In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be-(a)in the case of a suit by or against the Central Government, [the Union of India], and(b)in the case of a suit by or against a State Government, the State.]

## 80. Notice .-

(1)[Save as otherwise provided in sub-section (2), no suit shall be instituted ] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 27, for " No suit shall be instituted" (w.e.f. 1.2.1977).][against the Government (including the Government of the State of Jammu and Kashmir)] [Substituted by Act 26 of 1963, Section 3, for certain words (w.e.f. 5.6.1964).] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office] [Substituted by A.O. 1937, for " in the case of the Secretary of State in Council, delivered to, or left at the office of a Secretary to the L.G. or the Collector of the district" .] of-(a)in the case of a suit against the Central Government, [except where it relates to a railway] [Inserted by Act 6 of 1948, Section 2.], a Secretary to that Government;(b)[Inserted as Clause (aa) by Act 6 of 1948, Section 2.] [in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;] [Inserted as Clause (aa) by Act 6 of 1948, Section 2.][\* \* \*] [Former Clause (b) omitted by A.O. 1948.](bb)[ in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;] [Inserted by Act 26 of 1963, Section 3 (w.e.f. 5.6.1964).](c)in the case of a suit against [any other State Government] [Substituted by Act 26 of 1963, Section 3, for " a State Government" (w.e.f. 5.6.1964).], a Secretary to that Government or the Collector of the district; [\* \* \*] [The word " and" and Clause (d) omitted by A.O. 1948.][\* \* \*] [The word " and" and Clause (d) omitted by A.O. 1948.]and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.(2)[ A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).(3)No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice-(a)the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and(b)the cause of action and the relief claimed by the plaintiff had been substantially indicated.]

## 81. Exemption from arrest and personal appearance .-

In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity-(a)the defendant shall not be liable to arrest nor his property to attachment

otherwise than in execution of a decree, and(b)where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

## **82. Execution of decree .-**

(1)Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (2).] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 27 (w.e.f. 1.2.1977).](2)Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of [such decree] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 28, for " such report" (w.e.f. 1.2.1977).](3)[ The provisions of sub-sections (1) and (2) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award-(a)is passed or made against [the Union of India][or a State or a public officer in respect of any such act as aforesaid, whether by a Court or by any other authority; and [Inserted by Act 32 of 1949, Section 2.](b)is capable of being executed under the provisions of this Code or of any other law for the time being in force as if it were a decree.]]**[Suits by Aliens and by or against Foreign Rulers, Ambassadors and Envoys]** [Substituted by Act 2 of 1951, Section 12, for the former heading and Sections 83 to 87. ]

## **83. When aliens may sue .-**

Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any Court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such Court.Explanation .-Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of this section, be deemed to be an alien enemy residing in a foreign country.

## **84. When foreign States may sue .-**

A foreign State may sue in any competent Court:Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

## **85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers .-**

(1)The Central Government may, at the request of the Ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of such Ruler, by order, appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons

so appointed shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.(2)An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of such Ruler.(3)A person appointed under this section may authorise or appoint any other persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

## 86. Suits against foreign Rulers, Ambassadors and Envoys .-

(1)No [\* \* \*] [Inserted by Act 32 of 1949, Section 2.] foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid [a foreign State] [Substituted by the Code of Civil Procedure (Amendment) Act 1976, Section 29, for " a Ruler" (w.e.f. 1.2.1977).] from whom he holds or claims to hold the property.(2)Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the foreign State may be sued, but it shall not be given, unless it appears to the Central Government that [the foreign State] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for " the Ruler" (w.e.f. 1.2.1977).]-(a)has instituted a suit in the Court against the person desiring to sue [it] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for " him" (w.e.f. 1.2.1977).], or(b)by [itself] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for " himself" (w.e.f. 1.2.1977).] or another, trades within the local limits of the jurisdiction of the Court, or(c)is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or(d)has expressly or impliedly waived the privilege accorded to [it] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for " him" (w.e.f. 1.2.1977).] by this section.(3)[ Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for sub-Section (3) (w.e.f. 1.2.1977).](4)The preceding provisions of this section shall apply in relation to-(a)[ any Ruler of a foreign State;] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29 (w.e.f. 1.2.1977).](aa)[ ] [Clause (a) re-lettered as Clause (aa) by the Code of Civil Procedure (Amendment) Act, 1976, Section 29 (w.e.f. 1.2.1977).] any Ambassador or Envoy of a foreign State;(b)any High Commissioner of a Commonwealth country; and(c)any such member of the staff [of the foreign State or the staff or retinue of the Ambassador] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for certain words (w.e.f. 1.2.1977).] or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf,[as they apply in relation to a foreign State.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29, for certain words (w.e.f. 1.2.1977).](5)[ The following persons shall not be arrested under this Code, namely:-(a)any Ruler of a foreign State;(b)any Ambassador or Envoy of a foreign State;(c)any High Commissioner of a Commonwealth country;(d)any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the

High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.(6)Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 29 (w.e.f. 1.2.1977).]

## **87. Style of foreign Rulers as parties to suits .-**

The Ruler of a foreign State may sue, and shall be sued, in the name of his State:Provided that in giving the consent referred to in section 86, the Central Government may direct that the Ruler may be sued in the name of an agent or in any other name.

### **87A. Definitions of "foreign State" and "Ruler".-**

(1)In this Part,-(a)"foreign State" means any State outside India which has been recognised by the Central Government; and(b)"Ruler", in relation to a foreign State, means the person who is for the time being recognised by the Central Government to be the head of that State.(2)Every Court shall take judicial notice of the fact-(a)that a State has or has not been recognised by the Central Government;(b)that a person has or has not been recognised by the Central Government to be the head of a State.Suits against Rulers of former Indian States

### **87B. Application of sections 85 and 86 to Rulers of former Indian States .-**

(1)In the case of any suit by or against the Ruler of any former Indian State which is based wholly or in part upon a cause of action which arose before the commencement of the Constitution or any proceeding arising out of such suit, the provisions of section 85 and sub-sections (1) and (3) of section 86 shall apply in relation to such Ruler as they apply in relation to the Ruler of a foreign State.](2)In this section-(a)"former Indian State" means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section; [\* \*] [The word " and" omitted by Act 54 of 1972, Section 3.](b)[ "commencement of the Constitution" means the 26th day of January, 1950; and [Substituted by Act 54 of 1972, Section 3, for Clause (b).](c)"Ruler", in relation to a former Indian State, has the same meaning as in article 363 of the Constitution.]]Interpleader

## **88. Where interpleader suit may be instituted .-**

Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:Provided that where any suit is pending in which the rights of all parties can properly be

decided, no such suit of interpleader shall be instituted.

## **Part V – Special Proceedings**

### **Arbitration**

#### **89. Settlement of disputes outside the Court**

(1)Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for-(a)arbitration;(b)conciliation;(c)judicial settlement including settlement through Lok Adalat; or(d)mediation.(2)Where a dispute has been referred-(a)for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;(b)to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;(c)for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;(d)for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.]**Special case**

#### **90. Power to state case for opinion of Court .-**

Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.**Public nuisances and other wrongful acts affecting the public**

#### **91. Public nuisances .-**

(1)In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-(a)by the Advocate-General, or(b)with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.](2)Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.



## 92. Public charities .-

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-(a) removing any trustee; (b) appointing a new trustee; (c) vesting any property in a trustee; (cc) [ directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;] [Inserted by Act 66 of 1956, Section 9.] (d) directing accounts and inquiries; (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust; (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged; (g) settling a scheme; or (h) granting such further or other relief as the nature of the case may require. (2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States] [Inserted by Act 2 of 1951, Section 13.], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section. (3) [ The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:-(a) where the original purposes of the trust, in whole or in part, -(i) have been, as far as may be, fulfilled; or (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or (e) where the original purposes, in whole or in part, have, since they were laid down, -(i) been adequately provided for by other means, or (ii) ceased, as being useless or harmful to the community, or (iii) ceased to be, in law, charitable, or (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]

## 93. Exercise of powers of Advocate-General outside Presidency-towns

The powers conferred by sections 91 and 92 on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint in this behalf.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 31 (w.e.f. 1.2.1977). ]

## **Part VI – Supplemental Proceedings**

### **94. Supplemental proceedings .-**

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,-(a)issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;(b)direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;(c)grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;(d)appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;(e)make such other interlocutory orders as may appear to the Court to be just and convenient.

### **95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds .-**

(1)Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,-(a)it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or(b)the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, [not exceeding fifty thousand rupees], as it deems a reasonable compensation to the defendant for the [expense or injury (including injury to reputation) caused to him] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 32, for " expenses and injury caused to him" (w.e.f. 1.2.1977).]:Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.(2)An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

## **Part VII – Appeals**

### **Appeals from original decrees**

### **96. Appeal from original decree .-**

(1)Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.(2)An appeal may lie from an original decree passed ex parte .(3)No appeal shall lie from a decree passed by the Court with the consent of parties.(4)No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the

subject-matter of the original suit does not exceed [ten thousand rupees.]

### **97. Appeal from final decree where no appeal from preliminary, decree .-**

Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

### **98. Decision where appeal heard by two or more Judges .-**

(1)Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.(2)Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:Provided that where the Bench hearing the appeal is [composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench], and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.(3)[ Nothing in this section shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court.] [Inserted by Act 18 of 1928, Section 2 and Sch. I.]

### **99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction .-**

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:Provided that nothing in this section shall apply to non-joinder of a necessary party.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 35 (w.e.f. 1.2.1977).]

### **99A. [No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected**

Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.][**Appeals from appellate decrees**

### **100. Second appeal**

(1)[Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court

subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.(2)An appeal may lie under this section from an appellate decree passed ex parte .(3)In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.(4)Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.(5)The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]

### **100A. No further appeal in certain cases**

[Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.]

### **101. Second appeal on no other grounds .-**

No second appeal shall lie except on the grounds mentioned in section 100.

### **102. No second appeal in certain cases**

[No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.]

[Uttar Pradesh.]- In Section 102 of the Code of Civil Procedure, 1908 hereinafter in this chapter referred to as the principal Act for the words "twenty five thousand rupees", the words "fifty thousand rupees" shall be substituted. [U.P. act 16 of 2019].

### **103. [ Power of High Court to determine issue of fact**

.-In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-(a)which has not been determined by the lower appellate Court or both by the Court of first instance and the lower appellate Court, or(b)which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.]Appeals from orders

### **104. Orders from which appeal lies .-**

(1)An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:-[\* \* \* \* \*](ff)[ an order under section 35-A;] [Inserted by Act 9 of 1922, Section 3.](ffa)[ an order under section 91 or

section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 41 (w.e.f. 1.2.1977).](g)an order under section 95;(h)an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;(i)any order made under rules from which an appeal is expressly allowed by rules:[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made. ] [Inserted by Act 9 of 1922, Section 3. ](2)No appeal shall lie from any order passed in appeal under this section.

## **105. Other orders .-**

(1)Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.(2)Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand [\* \* \*] from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

## **106. What Courts to hear appeals .-**

Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.**General provisions relating to appeals**

## **107. Powers of appellate Court .-(1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-**

(a)to determine a case finally;(b)to remand a case;(c)to frame issues and refer them for trial;(d)to take additional evidence or to require such evidence to be taken.(2)Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

## **108. Procedure in appeals from appellate decrees and orders .-The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals-**

(a)from appellate decrees, and(b)from orders made under this Code or under any special or local law in which a different procedure is not provided.**Appeals to the Supreme Court**

## **109. [ When appeals lie to the Supreme Court**

.-Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies-(i)that the case involves a substantial question of law of general importance; and(ii)that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

## **110. Value of subject-matter .-**

[ Omitted by the Code of Civil Procedure (Amendment) Act , 1973 (49 of 1973), section 3 (w.e.f.29-11-1973).]

## **111. Bar of certain appeals .-**

[ Repealed by A.O. 1950.]

## **111A. Appeals to Federal Court**

[ Repealed by the Federal Court Act, 1941 (21 of 1941), section 2 (w.e.f.1-9-1942).]]

## **112. Savings .-**

(1)Nothing contained in this Code shall be deemed-(a)to affect the powers of the Supreme Court under Article 136 or any other provision of the Constitution, or(b)to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court.](2)Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

## **Part VIII – Reference, Review And Revision**

## **113. Reference to High Court .-**

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.Explanation.-In this section, "Regulation" means any Regulation of

the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.]

## **114. Review .-**

Subject as aforesaid, any person considering himself aggrieved-(a)by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,(b)by a decree or order from which no appeal is allowed by this Code, or(c)by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

## **115. Revision .-**

(1)The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-(a)to have exercised a jurisdiction not vested in it by law, or(b)to have failed to exercise a jurisdiction so vested, or(c)to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 12, for former proviso (w.e.f. 1.7.2002).](2)[ The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.(3)[ A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 43 (w.e.f. 1.2.1977).]Explanation .-In this section, the expression, "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 43 (w.e.f. 1.2.1977).]

[Uttar Pradesh.]- In Section 115 of the principal Act, for the words "five lakh rupees", the words "twenty five lakh rupees" shall be substituted. [U.P. Act 16 of 2019].

## **Part IX – Special Provisions Relating To The [High Courts [Not Being The Court Of A Judicial Commissioner]]**

[Substituted By Act 2 Of 1951, Section 14, For &Quot; Chartered High Court&Quot; .]

## **116. Part to apply only to certain High Courts .-**

This Part applies only to High Courts [not being the Court of a Judicial Commissioner].

## **117. Application of Code to High Courts -**

Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts.

## **118. Execution of decree before ascertainment of costs .-**

Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

## **119. Unauthorised persons not to address Court .-**

Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

## **120. Provisions not applicable to High Court in original civil jurisdiction .-**

(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20. [\* \* \*]

## **Part X – Rules**

### **121. Effect of rules in First Schedule .-**

The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

### **122. Power of certain High Courts to make rules .-**

[High Courts [not being the Court of a Judicial Commissioner]] [\* \* \*] [The words " and the Chief Court of Lower Burma" repealed by Act 11 of 1923, Section 3 and Sch. II.] may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.



## 123. Constitution of Rule Committees in certain States .-

(1)A Committee, to be called the Rule Committee shall be constituted at [the town which is the usual place of sitting of each of the High Courts [\* \* \*] referred to in section 122.](2)Each such Committee shall consist of the following persons, namely:-(a)three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or [\* \* \*] [The brackets and words " (in Burma)" repealed by Act 11 of 1923, Section 3 and Sch. II.] a Divisional Judge for three years-(b)[ two legal practitioners enrolled in that Court,] [Substituted by Act 2 of 1951, Section 16, for the original Clauses (b) and (c).](c)[ a Judge of a Civil Court subordinate to the High Court,] [Clause (d) relettered as Clause (c) by Act 2 of 1951, Section 16.] [\* \* \*] [The word " and" omitted by Act 38 of 1978, Section 3 and Sch. II (w.e.f. 28.11.1978).][\* \* \*] [Clause (d) omitted by Act 38 of 1978, Section 3 and Sch. II (w.e.f. 28.11.1978).](3)The members of each such Committee shall be appointed by the [High Court] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 44, for " Chief Justice or Chief Judge" (w.e.f. 1.2.1977).], who shall also nominate one of their member to be President:[\* \* \*] [Proviso omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 44 (w.e.f. 1.2.1977).](4)Each member of any such Committee shall hold office for such period as may be prescribed by the [High Court] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 44, for " Chief Justice or Chief Judge" (w.e.f. 1.2.1977).] in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the State in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said [High Court] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 44, for " Chief Justice or Chief Judge" (w.e.f. 1.2.1977).] may appoint another person to be a member in his stead.(5)There shall be a Secretary to each such Committee, who shall be appointed by the [High Court] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 44, for " Chief Justice or Chief Judge" (w.e.f. 1.2.1977).] and shall receive such remuneration as may be provided in this behalf [by the State Government.] [Substituted by A.O. 1937, for " by the G.G. in C. or by L.G., as the case may be" .]

## 124. Committee to report to High Court .-

Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

## 125. Power of other High Courts to make rules .-

High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions [as [the State Government] may determine] [Substituted by Act 38 of 1920, Section 2 and Sch. I, Pt. I, for " as G.G. in C. may determine" .]:Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

## **126. Rules to be subject to approval**

Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the State in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any State, to the previous approval of the [Central Government].

## **127. Publication of rules .-**

Rules so made and [approved] shall be published in the [Official Gazette] [Substituted by A.O. 1937, for " Gazette of India or in the local Official or in the Official Gazette, as the case may be," but the latter words have been omitted as being redundant.], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

## **128. Matters for which rules may provide .-**

(1)Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.(2)In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:-(a)the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;(b)the maintenance and custody, while under the attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;(c)procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;(d)procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;(e)procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;(f)summary procedure-(i)in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising-on a contract express or implied; or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only ; or on a trust; or(ii)in suits for the recovery of immovable property, with or without a claim for rent or mesne profits , by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;(g)procedure by way of originating summons;(h)consolidation of suits, appeals and other proceedings;(i)delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and(j)all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

## **129. Power of High Courts to make rules as to their original civil procedure .-**

Notwithstanding anything in this Code, any High Court [not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent [or order] [Inserted by A.O. 1950.] [or other law] [Inserted by Act 2 of 1951, Section 17.] establishing it, to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

## **130. Power of other High Courts to make rules as to matters other than procedure**

[A High Court [not being a High Court to which section 129 applies] may, with the previous approval of the State Government, make with respect to any matter other than procedure any rule which a High Court [for a [\* \* \*] [Substituted by A.O. 1950, for " so constituted" . ] State] might under [article 227 of the Constitution] [Substituted by A.O. 1950, for " Section 224 of the Government of India Act, 1935" .] make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.]

## **131. Publication of rules .-**

Rules made in accordance with section 129 or section 130 shall be published in the [Official Gazette] and shall from the date of publication or from such other date as may be specified have the force of law.

## **Part XI – Miscellaneous**

## **132. Exemption of certain women from personal appearance .-**

(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court. (2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

## **133. Exemption of other persons .-**

(1) The following persons shall be entitled to exemption from personal appearance in Court, namely:-(i) the President of India; (ii) the Vice-President of India; (iii) the Speaker of the House of the People; (iv) the Ministers of the Union; (v) the Judges of the Supreme Court; (vi) the Governors of States and the Administrators of Union territories; (vii) the Speakers of the State Legislative Assemblies; (viii) the Chairmen of the State Legislative Councils; (ix) the Ministers of States; (x) the Judges of the High Courts ; and (xi) the persons to whom section 87-B applies.][\* \* \*] [Sub-Section (2) omitted by Act 66 of 1956, Section 12.] (3) Where any person [\* \* \*] [The words " so exempted" omitted by Act 66 of 1956, Section 12.] claims the privilege of such exemption, and it is consequently

necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

### **134. Arrest other than in execution of decree .-**

The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

### **135. Exemption from arrest under civil process .-**

(1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court. (2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal. (3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

### **135A. [Exemption of members of legislative bodies from arrest and detention under civil process**

(1) [No person shall be liable to arrest or detention in prison under civil process-(a) if he is a member of-(i) either House of Parliament, or (ii) the Legislative Assembly or Legislative Council of a State, or (iii) a Legislative Assembly of a Union territory, during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council; (b) if he is a member of any committee of-(i) either House of Parliament, or (ii) the Legislative Assembly of a State or Union territory, or (iii) the Legislative Council of a State, during the continuance of any meeting of such committee; (c) if he is a member of-(i) either House of Parliament, or (ii) a Legislative Assembly or Legislative Council of a State having both such Houses, during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or Houses of the State Legislature, as the case may be; and during the forty days before and after such meeting, sitting or conference. ] (2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).]

### **136. Procedure where person to be arrested or property to be attached is outside district .-**

(1)Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.(2)The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.(3)The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court, or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.(4)Where a person to be arrested or movable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, [\* \* \*] the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras [or Bombay] [Substituted by A.O. 1937, for "Bombay or Rangoon" . ], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

### **137. Language of subordinate Courts .-**

(1)The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the State Government otherwise directs.(2)The State Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.(3)Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English, a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

### **138. Power of High Court to require evidence to be recorded in English .-**

(1)The [High Court] may, by notification in the Official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in the manner prescribed.(2)Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

### **139. Oath on affidavit by whom to be administered .-**

In the case of any affidavit under this Code-(a)any Court or Magistrate, or(aa)[ any notary appointed under the Notaries Act, 1952 (53 of 1952), or](b)any officer or other person whom a High Court may appoint in this behalf, or(c)any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf, may administer the oath to the deponent.

### **140. Assessors in causes of salvage, etc.-**

(1)In any admiralty or vice-admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors, and such assessors shall attend and assist accordingly.(2)Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

### **141. Miscellaneous proceedings .-**

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.[Explanation .-In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.]

### **142. Orders and notices to be in writing .-**

All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

### **143. Postage .-**

Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:Provided that the State Government [\* \* \*] may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

### **144. Application for restitution .-**

(1)Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 48, for certain words (w.e.f. 1.2.1977).] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order]

[Inserted by Act 66 of 1956, Section 13.] or [such part thereof as has been varied, reversed, set aside or modified] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 48, for certain words (w.e.f. 1.2.1977). ] and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits , which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 48, for certain words (w.e.f. 1.2.1977). ].[ Explanation .-For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,-(a)where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;(b)where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;(c)where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.](2)No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

#### **145. Enforcement of liability of surety .-**

Where any person [has furnished security or given a guarantee] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 48 (w.e.f. 1.2.1977).]-(a)for the performance of any decree or any part thereof, or(b)for the restitution of any property taken in execution of a decree, or(c)for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,the decree or order may be executed in the manner herein provided for the execution of decrees, namely:-(i)if he has rendered himself personally liable, against him to that extent;(ii)if he has furnished any property as security, by sale of such property to the extent of the security;(iii)if the case falls both under clauses (i) and (ii), then to the extent specified in those clauses, and such person shall be deemed to be a party within the meaning of section 47]:Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

#### **146. Proceedings by or against representatives .-**

Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

#### **147. Consent or agreement by persons under disability .-**

In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

## **148. Enlargement of time .-**

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [not exceeding thirty days in total,] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 49, for certain words (w.e.f. 1.2.1977). ] even though the period originally fixed or granted may have expired.

## **148A. Right to lodge a caveat**

(1)[Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.(2)Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made under sub-section (1).(3)Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.(4)Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.(5)Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.]

## **149. Power to make up deficiency of Court-fees .-**

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

## **150. Transfer of business .-**

Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.



## **151. Saving of inherent powers of Court .-**

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

## **152. Amendment of judgments, decrees or orders .-**

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

## **153. General power to amend .-**

The Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

### **153A. [ Power to amend decree or order where appeal is summarily dismissed**

Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

### **153B. Place of trial to be deemed to be open Court .-The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:**

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.]

## **154. Saving of present right of appeal .-**

[ Repealed by the Repealing and Amending Act, 1952 (48 of 1952), section 2 and Schedule I.]

## **155. Amendment of certain Acts .-**

[ Repealed by the Repealing and Amending Act, 1952 (48 of 1952), section 2 and Schedule I.]

## **156. Repeals .-**

[ Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914), section 3 and Schedule II.]

## **157. Continuance of orders under repealed enactments .-**

Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act 8 of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

## **158. Reference to Code of Civil Procedure and other repealed enactments .-**

In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act 8 of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

# **THE FIRST SCHEDULE**

## **ORDER – I**

### **PARTIES OF SUITS**

#### **1. Who may be joined as plaintiffs.-**

All persons may be joined in one suit as plaintiffs where-(a)any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and(b)if such persons brought separate suits, any common question of law or fact would arise.][ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52, for the former Rule (w.e.f. 1.2.1977).]

## **2. Power of Court to order separate trial. -**

Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

## **3. Who may be joined as defendants.**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52, for the former Rule (w.e.f. 1.2.1977).]-All persons may be joined in one suit as defendants where-(a)any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and(b)if separate suits were brought against such persons, any common question of law or fact would arise.]

Bihar.- In its application to the Scheduled Areas in the State of Bihar, in Order I, Rule 3, following proviso added:-"Provided that in suits for declaration of title or for possession relating to immovable properties of a member of the Scheduled Tribes as specified in Part III to the Schedule to the Constitution (Scheduled Tribes) Order, 1950, the Deputy Commissioner concerned shall also be joined as a defendant."-[Bihar Scheduled Areas Regulation, 1969].

### **3A. [ Power to order separate trials where joinder of defendants may embarrass or delay trial.**

[ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52 (w.e.f. 1.2.1977).]-Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

Madhya Pradesh.- In Order I of First Schedule to the Principal Act, after Rule 3A, the following rule inserted:-3B. Conditions for entertainment of suits.- (1) No suit or proceeding for-(a) declaration of title or any right over any agricultural land, with or without any other relief; or(b) specific performance of any contract for transfer of any agricultural land, with or without any other relief, shall be entertained by any Court, unless the plaintiff or applicant, as the case may be, knowing or having reason to believe that a return under section 9 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) in relation to land aforesaid has been or is required to be filed by him or by any other person before competent authority appointed under that Act, has impleaded the State of Madhya Pradesh as one of the defendants or non-applicants, as the case may be, to such suit or proceeding.(2) No Court shall proceed with pending suit or proceeding referred to in sub-rule (1) unless, as soon as may be, the State Government is so impleaded as a defendant or non-applicant.Explanation.- The expression "suit or proceeding" used in this sub-rule shall include appeal, reference or revision, but shall not include any proceeding for or connected with execution of any decree or final order passed in such suit or proceeding".-[M.P. Act 29 of 1984].

#### **4. Court may give judgment for or against one or more of joint parties.. -**

Judgment may be given without any amendment-(a)for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;(b)against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

#### **5. Defendant need not be interested in all the relief claimed. -**

It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

#### **6. Joinder of parties liable on same contract. -**

The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

#### **7. When plaintiff in doubt from whom redress is to be sought. -**

Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

#### **8. One person may sue or defend on behalf of all in same interest.**

[ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52, for the former Rule (w.e.f. 1.2.1977).]-(1)Where there are numerous persons having the same interest in one suit,-(a)one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;(b)the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.(2)The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.(3)Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.(4)No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).(5)Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.(6)A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or

for whose benefit, the suit is instituted, or defended, as the case may be. Explanation.-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the person on whom behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.]

### **8A. [ Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52, for the former Rule (w.e.f. 1.2.1977).]-While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take part in the proceedings of the suit as the Court may specify.]

### **9. Misjoinder and nonjoinder. -**

No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:[Provided that nothing in this rule shall apply to nonjoinder of a necessary party.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52, for the former Rule (w.e.f. 1.2.1977).]

### **10. Suit in name of wrong plaintiff. -**

(1)Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.(2)Court may strike out or add parties.-The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.(3)No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.(4)Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.(5)Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877)] [ See now the Limitation Act, 1963 (36 of 1963), Section 21.], section 22, the

proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

High Court Amendment-[Karnataka].-In its application to the State of Karnataka, in Order 1, rule 10, add the following as sub-rule (6):"(6) The Court may on the application of any party and after notice to the other partiesaffected by the application and on such terms and conditions as it may impose, transpose a plaintiff to the position of a defendant or subject to the provisions of sub-rule (3), aedant to the position of a plaintiff."-(w.e.f. 30-3-1962)

### **10A. [ Power of Court to request any pleader to address it.**

[ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52 (w.e.f. 1.2.1977).]-The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.]

### **11. Conduct of suit. -**

The Court may give the conduct of [a suit] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 52 (w.e.f. 1.2.1977).] to such persons as it deems proper.

### **12. Appearance of one of several plaintiffs or defendants for others. -**

(1)Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.(2)The authority shall be in writing signed by the party giving it and shall be filed in Court.

### **13. Objections as to nonjoinder or misjoinder. -**

All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issue are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

## **ORDER – II**

### **FRAME OF SUIT**

#### **1. Frame of suit. -**

Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

## **2. Suit to include the whole claim. -**

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. (2) Relinquishment of part of claim.- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue for one of several reliefs.- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. Explanation.- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action. Illustration A lets a house to B at a yearly rent of Rs. 1200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Uttar Pradesh.- In Order II, Rule 2.- (a) the existing Explanation shall be numbered as Explanation I, and after Explanation I, as so numbered the following Explanation II shall be inserted, namely:- "Explanation II.- For the purposes of this rule a claim for ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action": (b) for the illustration, the following illustration shall be substituted, namely:- "Illustration.- A lets immovable property to B at a yearly rent. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid, and the tenancy is determined before A sues B in 1908, only for the rent due for 1906. A may afterwards sue B for ejectment but not for the rent due for 1905 or 1907".-[U.P. Act 57 of 1976].

## **3. Joinder of causes of action. -**

(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit. (2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

## **4. Only certain claims to be joined for recovery of immovable property. -**

No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except-(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof; (b) claims for damages for breach of any contract under which the property or any part thereof is held; and (c) claims in which the relief sought is based on the same cause of action: Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

## **5. Claims by or against executor, administrator or heir. -**

No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

## **6. Power of Court to separate trials.**

[ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 53, for Rule 6 (w.e.f. 1.2.1977).]- Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

## **7. Objections as to misjoinder. -**

All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen, and any such objection so taken shall be deemed to have been waived.

High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Kerala].-In Order 2, after rule 7, the following rule shall be inserted, namely:"8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed and shall, within a time to be fixed by the Court, amend the plaint suitably.(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time, within which, to submit the amended plaint for the remaining cause of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided in rule 18 of Order 6 and as required by the provisions of the Court-fees Act."-(9-6-1959).[Punjab].-Add rule 8, Order 2:"8.(1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed and shall, within a time to be fixed by the Court, amend the plaint by striking out the remaining causes of action.(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time, within which, to submit amended plaints for the remaining causes of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided in rule 18 of Order 6 and as required by the provisions of the Court-fees Act."[Rajasthan].-Add rule 8 in Order 2:"8.(1) Where such objection has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed and shall, within a time to be fixed by the Court, amend the plaint by striking out the remaining causes of action.(2) When the plaintiff has selected the cause of action with which he will proceed, the Court may on his application pass an order giving him time, within



which, to submit amended plaints for the remaining causes of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided in rule 18 of Order 6 and as required by the provisions of the Court-fees Act."-(14-8-1954).

## **ORDER – III**

### **RECOGNIZED AGENTS AND PLEADERS**

#### **1. Appearances, etc., may be in person, by recognized agent or by pleader. -**

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader [appearing, applying or acting, as the case may be,] [ Substituted by Act 22 of 1926, Section 2, for " duly appointed to act" .] on his behalf: Provide that any such appearance shall, if the Court so directs, be made by the party in person.

#### **2. Recognized agent. -**

The recognized agent of parties by whom such appearances, applications and acts may be made or done are-(a)persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;(b)persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

High Court Amendments-[Gujarat].-Substitute the following for rule 2(a):-"Persons holding on behalf of such parties either (i) a general power-of-attorney, or (ii) in the case of proceedings in the High Court of Gujarat an Advocate, and in the case of proceedings in any District, an Advocate or a pleader to whom a sanad for that District has been issued, holding the requisite special power-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them or him to make and do such appearances, applications and acts on behalf of such parties."-(17-8-1961).[Madhya Pradesh].-Clause (a) is the same as that of Gujarat except that for the words "in the High Court of Gujarat, an Advocate", the words "in the High Court of Madhya Pradesh, an Advocate of that High Court" and for the words "in any District, an Advocate", the words "in any District, any Advocate" are substituted.-(16-9-1960).

#### **3. Service of process on recognized agent. -**

(1)Process served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.(2)The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

High Court Amendment-[Punjab, Haryana and Chandigarh].-The following shall be substituted for sub-rule (1) to rule 3 of Order III: "(1) Processes served on the recognised agent or on an Advocate of the party shall be as effectual as if the same had been served on the party in person unless the Court otherwise directs."-(Punjab 11-4-1975; Haryana 25-3-1975; Chandigarh 1-5-1975).

#### **4. Appointment of pleader. [Substituted by Act 22 of 1926, Section 2, for the original Rule 4.]**

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment. (2) Every such appointment shall be [filed in Court and shall, for the purposes of sub-rule (1), be] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 54, for certain words (w.e.f. 1.2.1977).] [deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.] [Substituted by Act 22 of 1926, Section 2, for the original Rule 4.] [Explanation.-For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit, -(a) an application for the review of decree or order in the suit, (b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit, (c) an appeal from any decree or order in the suit, and (d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.] (3) [Nothing in sub-rule (2) shall be construed -(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or (b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1)]. (4) [The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.] (5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating -(a) the names of the parties to the suit, (b) the name of the party for whom he appears, and (c) the name of the person by whom he is authorized to appear : Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.] [Substituted by Act 22 of 1926, Section 2, for the original Rule 4.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 54, for sub Rule (3) (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-(i) In sub-rule (2), in Explanation, after clause (a), insert the following clause: "(aa) a proceeding for revision of an order in the suit."-(21-3-1981). (ii) In sub-rule (2), after the existing clause (d), add the following new clauses (e) to (j): -(e) An application or proceedings for transfer under sections 22, 24 and 25 of this Code; (f) An application under rule 4 or rule 9 or rule 13 of Order 9 of this Code; (g) An application under rule 4 of Order 37 of this Code; (h) A reference arising from or out of suit; (i) An application for execution of any decree or order in the

suit;(j) Any application relating to or incidental to or arising from or out of any proceedings referred to in clauses (a) to (i) of this sub-rule (including an application) for leave to appeal to Supreme Court: Provided that, where the venue of the suit or the proceedings shifts from one Court (subordinate or otherwise) to another situate at a different station, the pleader filing the appointment referred to, in sub-rule (2) in the former Court shall not be bound to appear, act or plead in the latter Court unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act or plead in that Court."-(22-10-1994).[Andhra Pradesh].-Same as that of Madras.[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Gujarat].-In rule 4(3) the words "or any application relating to such appeal" shall be inserted between the words "order in the suit" and "and any application or act".-(17-8-1961).[Karnataka].-Substitute the following for rule 4, namely:"4. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document subscribed with his signature in his own hand by such person or by his recognised agent or by some other person, duly authorised by or under a power-of-attorney, to make such appointment and the appointment has been accepted in writing by the pleader.(2) Every such appointment shall be filed into Court. Except as otherwise provided in this rule, no such appointment shall be deemed to have been terminated until its determination with the leave of the Court by a document subscribed with his signature in his own hand by the client or his recognised or authorised agent or by the pleader, as the case may be, and filed into Court; or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.(3) For the purpose of sub-rule (2), proceedings in the suit shall mean all interlocutory and miscellaneous proceedings connected with the suit or any decree or order passed therein taken in the Court in which the suit has been instituted or by which the suit has been disposed of, and shall include applications for review of judgment, applications for amendment or correction of the decree, applications for execution of the decree or any order in the suit or for restitution under section 144 of the Code or otherwise, applications for leave to appeal against any decree or order passed in the suit, and applications or acts for the purpose of obtaining copies of documents or copies of judgments, decrees or orders, or for the return of documents produced or filed in the suit or for obtaining payment or refunds of monies paid into Court in connection with the suit or any decree or order therein.(4)(a) In the case of applications for execution of a decree, applications for review of judgment and applications for leave to appeal, a pleader whose appointment continues in force by virtue of sub-rule (2) of this rule and who has been served with the notice in any such application shall be at liberty to intimate to the Court in writing in the form of a memorandum filed into Court at or before the first hearing of any such application or appeal that he has not received instructions from his client and to retire from the case.(b) Where, however, the pleader, does not so report the absence of instructions to the Court but proposes to continue to act on the strength of the original appointment, he shall file into Court at or before the first hearing of such matter a formal memorandum stating that he will continue to appear and act for his client in the said application or appeal, as the case may be.(c) If a pleader files the memorandum referred to in clause (a) or omits to file the memorandum referred to in clause (b) within the time prescribed therefor, the Court shall proceed as provided in sub-rule (2) of rule 5 of this Order.(5) The High Court may by rule or general order direct that where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified in the rule or order.(6) No pleader who has been engaged for the

purpose of pleading only shall plead on behalf of any party unless he has filed into Court a memorandum of appearance signed by himself and stating (a) the names of the parties to the suit, (b) name of the party for whom he appears, and (c) the name of the person by whom he is authorized to appear: Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has himself been duly appointed to act in Court on behalf of such party. (7) No Government pleader or other pleader appearing on behalf of the Government or on behalf of any public servant sued in his official capacity shall be required to present any document empowering him to act, but such pleader shall file into Court a memorandum of appearance signed by him and stating the particulars mentioned in sub-rule (6)."- (R.O.C. No. 2526/1959, dated 9-2-1967). [Kerala].- In Order 3, rule 4, (i) in sub-rule (2), after the words "Every such appointment" the words "when accepted by the pleader in writing" shall be inserted; (ii) in sub-rule (3) after the words "or section 152" the words "or applications under Order 9, rule 9 or 13" shall be inserted; (iii) sub-rule (5) shall be omitted; (iv) after sub-rule (5) the following sub-rule shall be inserted, namely: "(6) No pleader appearing on behalf of the Government or on behalf of any public servant sued, in his official capacity shall be required to present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating: (a) the names of the parties to the suit; (b) the name of the party for whom he appears; and (c) the name of the person by whom he is authorized to appear."- (9-6-1959). [Madhya Pradesh].- Substitute the following for clause (3) of rule 4: "(3) For the purposes of sub-rule (2) above, (i) an application or a proceeding for transfer under sections 23, 24 or 25 of this Code, (ii) an application under rule 9 or rule 13 of Order 9 of this Code, (iii) an application under rule 4 of Order 38 of this Code, (iv) an application for review of judgment, (v) an application under section 152 of this Code, (vi) a reference arising from or out of the suit, (vii) an application for amendment of the decree or order or the record in the suit or an appeal, reference or revision arising from or out of the suit, (viii) an application for the execution of any decree or order in the suit, (ix) an application under section 144 of this Code, (x) any appeal (including an appeal under the Letters Patent of the High Court) or revision application from any decree or order in the suit or an appeal arising from or out of the suit, (xi) any application relating to or incidental to or arising in or out of such appeal or revision or a reference arising from or out of the suit (including an application for leave to appeal under the Letters Patent of the High Court or for leave to appeal to the Supreme Court), (xii) any application or proceeding for sanctioning prosecution under Chapter 35 of the Code of Criminal Procedure, 1898, relating to the suit or any of the proceedings mentioned hereinbefore, or any appeal or revision arising from and out of any order passed in such application or proceeding, (xiii) any application or act for the purposes of obtaining, copies of documents or the return of documents produced or filed in the suit or in any of the proceedings mentioned hereinbefore, (xiv) any application for the withdrawal or for obtaining the refund or payment of or out of the moneys paid or deposited into the Court in connection with the suit or any of the proceedings mentioned hereinbefore (including withdrawal, refund or payment of or out of the moneys deposited as security for costs or for covering the costs of the preparation and printing of the Transcript Record of the appeal to the Supreme Court), (xv) any application for expunging any remarks or observations on the record of or made in the judgment in the suit or any appeal, revision, reference or review arising from or out of the suit, (xvi) any application for certificate in regard to the substitution of heirs in appeal to the Supreme Court arising from the suit, and (xvii) any application under rule 15 of Order 45 of this Code, shall be deemed to be proceedings in the suit: Provided that

where the venue of the suit or the proceedings shifts from one Court (Subordinate or otherwise) to another the Pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act and plead in that Court."-(18-10-1968).[Madras].-In sub-rules (1) and (2) of Order 3, rule 4, the words "a document subscribed with his signature in his own hand" have been substituted for the words "in writing signed".The following has been inserted as sub-rule (6):"(6) No Government or other pleader appearing on behalf of the Government, or on behalf of any public servant sued in his official capacity, shall be required to present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating the particulars mentioned in sub-rule (5)."[Orissa].-Same as that of Patna-(26-7-1948).[Patna].-The following has been substituted for sub-rule (4):"(4) Notwithstanding anything contained in Order 3, rule 4(3) of the First Schedule of the Code of Civil Procedure, 1908, no advocate shall be entitled to make or do any appearance, application of act for any person unless he presents an appointment in writing, duly signed by such person or his recognised agent or by some other agent duly authorized by power of attorney to act in this behalf, or unless he is instructed by an attorney or pleader duly authorized to act on behalf of such person."[Punjab].-For sub-rule (3) of rule 4, substitute-"(3) For the purpose of sub-rule (2),(i) an application or a proceeding for transfer under sections 22, 24 or 25 of this Code, (ii) an application under rule 4 or rule 9 or rule 13 of Order 9 of this Code, (iii) an application under rule 4 of Order 38 of this Code, (iv) an application for review of judgment, (v) a reference arising from or out of the suit, (vi) an application for amendment of the decree or order or the record in the suit, or an appeal, reference or revision arising from or out of the suit, (vii) an application for the execution of any decree or order in the suit, (viii) an application for restitution under section 144 or section 151 of this Code, (ix) an application under section 151 of this Code, (x) an application under section 152 of this Code, (xi) any appeal (including an appeal under the Letters Patent of the High Court) or revision application from any decree or order in the suit or an appeal arising from or out of the suit, (xii) any application relating to, or incidental to, or arising from or out of such appeal or revision or a reference arising from or out of the suit (including an application for leave to appeal under the Letters Patent of the High Court or for leave to appeal to the Supreme Court), (xiii) any application for directing or proceeding for prosecution under Chapter 35 of the Code of Criminal Procedure, 1898, relating to the suit or any of the proceedings, mentioned hereitibefore or an appeal or revision arising from and out of any order passed insuch application or proceeding, (xiv) any application or act for the purposes of obtaining copies of documents or the return of documents produced or filed in the suit or in any of the proceedings mentioned hereinbefore, (xv) any application for the withdrawal or for obtaining the refund to payment of or out of the monies paid or deposited into the Court in connection with the suit or any of the proceedings mentioned hereinbefore (including withdrawal, refund or payment of or out of the monies deposited as security for costs or for covering the costs of the preparation and printing of the Transcript Record of the appeal to the Supreme Court), (xvi) any application for expunging any remarks, observations on the record of or made in the judgment in the suit or any appeal, revision, reference or review arising from or out of the suit, (xvii) any application for certificate in regard to\_ the substitution of heirs in appeal to the Supreme Court arising from the suit, and (xviii) any application under rule 15 of Order 45 of the Code, shall be deemed to be proceedings in the suit:Provided that, where the venue of the suit or the proceedings shift from one Court (subordinate or otherwise) to another,

situate at a different station, the pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act and plead in that Court."-(31-9-1968).[Rajasthan].-(a) Sub-rule (3) is the same as in Gujarat.(b) Add as sub-rule (6):"(6) No Government pleader within the meaning of Order 27, rule 8-B shall be required to present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating the particulars mentioned in sub-rule (5)."- (14-8-1954).

## **5. Service of process on pleader. -**

[Any process served on the pleader who has been duly appointed to act in Court for any party] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 54, for certain words (w.e.f. 1.2.1977).] or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.[ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 54 (w.e.f. 1.2.1977).]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Gujarat].-In rule 5, for the words "on the pleader of any party", the words "on a pleader who has been appointed to act for any party" shall be substituted-(17-8-1961).[Karnataka].-Substitute the following for rule 5:"5. (1) Any process served on the pleader of any party or left at the office or ordinary residence of such pleader and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.Explanation.-Service on a pleader engaged only to plead and who does not act for his client shall not raise the presumption under this rule.(2) A pleader appointed to act shall be bound to receive notice on behalf of his client in all proceedings in the suit as defined in sub-rule (3) of rule 4. Where, however, such pleader having been served with notice reports to Court absence of instructions from his client under sub-rule (4) of rule 4, the Court shall direct that notice shall be issued and served personally on the party in the manner prescribed for service of summons on a defendant under Order V of this Code."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madhya Pradesh].-Same as that of Gujarat-(16-9-1960).[Madras].-The following has been added at the end:"Explanation.-Service on a pleader who does not act for his client, shall not raise the presumption under this rule."-(20-12-1927).[Rajasthan].-Same as that of Gujarat-(14-8-1954).Order 3, Rule 5B[Orissa].-Same as that of Patna-(26-7-1948).[Patna].-The following has been added as rule 5-B to Order 3:"5B. Notwithstanding anything contained in Order 3, sub-rules (2) and (3) of rule 4 of the First Schedule of the Code of Civil Procedure, 1908, no pleader shall act for any person in the High Court, unless he has been appointed for the purpose in the manner prescribed by sub-rule (1) and the appointment has been filed in the High Court."

## **6. Agent to accept service. -**

(1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process. (2) Appointment to be in writing and to be filed in Court. - Such appointment may be special or general and shall be made by a instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court. (3) [The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 54 (w.e.f. 1.2.1977).]

High Court Amendment--[Gujarat].-In Order III, rule 6, after the existing sub-rule (2), add the following sub-rule with marginal note as new sub-rule (3) and its marginal note: "(3) Court may order appointment of agent for service within its jurisdiction. - The Court may, at any stage of a suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, to appoint within a specified time an agent within the jurisdiction of the Court to accept service of process on his behalf." - (17-8-1961).

## **ORDER – IV**

### **INSTITUTION OF SUITS**

#### **1. Suit to be commenced by plaintiff. -**

(1) Every suit shall be instituted by presenting a [plaint in duplicate to the Court] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 14, for " plaint the Court" (w.e.f. 1.7.2002).] or such officer as it appoints in this behalf. (2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable. (3) [ The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub rules (1) and (2).] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 14 (w.e.f. 1.7.2002).]

#### **2. Register of suits. -**

The Court shall cause the particulars of every suit to be entered in a book to be kept for the purposes and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

Uttar Pradesh.- In its application to the State of Uttar Pradesh after Order IV, the following Order shall be inserted: - **Order 4A CONSOLIDATION OF CASES** 1. Consolidation of suits and proceedings.- When two or more suits or proceedings are pending in the same Court, and the Court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, where upon all such suits and proceedings may be decided upon the evidence in all or any of such

suits or proceedings."-[U.P. Act 57 of 1976].

## ORDER – V

### Issue and service of summons

#### 1. Summons.

(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant : Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiffs claim: Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]. [Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]. [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).] (2) A defendant to whom a summons has been issued under sub-rule (1) may appear—(a) in person, or (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or (c) by a pleader accompanied by some person able to answer all such questions. (3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court

#### 2. Copy or statement annexed to summons.

[ Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 15, for Rule 2 (w.e.f. 1.7.2002).]- Every summons shall be accompanied by a copy of the plaint.]

High Court Amendments-[Allahabad].-(a) Substitute the following for sub rule "(1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf, a plaint together with a true copy for service with the summons upon each defendant, unless the Court for good cause shown allows time for filing such copies. (2) The Court-fee chargeable for such service shall be paid in the case of suit when the plaint is filed and in the case of all other proceedings when the process is applied for".-(24-7-1926). (b) Re-number sub-rule (2) as sub-rule (3).-(24-7-1926). [Bombay].-In Order IV, for the existing rule 1 and its marginal note, substitute the following as rule 1 and marginal note: "1. Suit to be commenced by a plaint.-(1)(a) Every suit shall be instituted by presenting a plaint to the Court or such Officer as it appoints in this behalf. (b) The



plaintiff shall, except in the Bombay City Civil Court, file as many true copies on plain paper, of the plaint with annexures as there are defendants, for service with the summons upon the defendants, unless the Court by reason of the length of the plaint or the number of defendants or for any other sufficient reason permits him to present a like number of concise statements of the nature of the claim made or of the relief claimed in the suit in which case, he shall present such statements. Such copies or statements shall be filed alongwith the plaint unless the Court, for good cause shown, allows time for filing such copies or statements.(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or the defendant sues or is sued.(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.(4) The fee, chargeable for service of the summons upon the defendants, shall be paid when the plaint is filed or within such time as may be extended by the Court.(5) Every plaint shall comply with the rules contained in Orders VI and VII so far as they are applicable."-(1-10-1983).[Madhya Pradesh].-Substitute the following for sub-rule (1)-"(1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaint, together with as many true copies on plain paper of the plaint as there are defendants, for service with the summons upon each defendant, unless the Court, for good cause shown, allows time for filing such copies."Add the following as sub-rule (2) to rule 1 and re-number the present sub-rule (2) as sub-rule (3)"(2) The Court-fee chargeable for such service shall be paid in the case of suits when the plaint is filed, and in the case of all other proceedings when the process is applied for."-(16-9-1960).[Rajasthan].-Substitute for sub-rule (1) as in Madhya Pradesh-(21-7-1954).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

### **3. Court may order defendant or plaintiff to appear in person. -**

(1)where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.(2)Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

### **4. No party to be ordered to appear in person unless resident with certain limits. -**

No party shall be ordered to appear in person unless he resides-(a)within the local limits of the Court's ordinary original jurisdiction, or(b)without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

High Court Amendments-[Bombay].-In Order V, for the existing rule 4, substitute, the following:"4. No party shall be ordered to appear in person unless he resides(a) within the local limits of the Court's Ordinary Original jurisdiction, or(b) without such limits but at a place less than 100 or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is

situate), less than five hundred kilometres distance from the Court house."-(1-10-1983).Order 5, Rule 4A[Allahabad].-In Order 5, insert the following as rule 4A:"4A. Except as otherwise provided, in every interlocutory proceeding and in every proceeding after decree in the trial Court, the Court may, either on the application of any party or of its own motion, dispense with service upon any defendant who has not appeared or upon any defendant who has not filed a written statement."-(24-7-1926).

## **5. Summons to be either to settle issues or for final disposal. -**

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 :Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Assam].-Same as that of Calcutta.[Bombay].-For the existing rule 5 and its marginal note, substitute the following as rule 5 and marginal note:"5. Summons to be either to settle issues or for final disposal.-The Court shall determine at the time of issuing the summons whether it shall be for the filing of written statement and the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:Provided that in every suit heard by a Court of Small Causes the summons shall be for final disposal of the suit."-(1-10-1983).[Calcutta].-Insert the words "for the ascertainment whether the suit will be contested", after the words "issues only".[Karnataka].-Delete rule 5 and substitute the following:"5. The Court shall determine, at the time of issuing the summons, whether it shall be-(a) for the settlement of issues only, or(b) for the defendant to appear and state whether he contests or does not contest the claim and directing him if he contests to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest for final disposal of the suit at once, or(c) for the final disposal of the suit;and the summons shall contain a direction accordingly:Provided that, in every suit heard by a Court of Small Causes, the summons shall be for final disposal of the suit."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-For rule 5 the following rule shall be substituted, namely:"5. Summons to be either(1) to ascertain whether the suit is contested or not or(2) for the final disposal of the suit. The Court shall determine, at the time of issuing the summons, whether it shall be(i) for the defendant to appear and state whether he contests or does not contest the claim and directing him, if he contests, to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest, for final disposal of the suit at once, or(ii) for the final disposal of the suit at once;, and the summons shall contain a direction accordingly:Provided that in every non-appealable case the summons shall be for the final disposal of the suit."-(9-6-1959).[Madras].Delete the first paragraph of rule 5 in Order 5 and substitute the following in lieu thereof:"5. The Court shall determine at the time of issuing the summons, whether it shall be-(1) for the settlement of issues only; or;(2) for the defendant to appear and state whether he contests or does not contest the claim and directing him, if he contests, to receive directions as to the date on which he has to file his written statement, the date of trial and other matters and if he does not contest, for final disposal of the suit at once; or;(3) for the final disposal of the suit; and the summons shall contain a direction accordingly."

## **6. Fixing day for appearance of defendant. -**

The day [under sub-rule (1) of rule 1] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 15, for " the appearance of the defendant" (w.e.f. 1.7.2002).] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

## **7. Summons to order defendant to produce documents relied on by him. -**

The summons to appeal and answer shall order the defendant to produce [all documents or copies thereof specified in rule 1-A of Order VIII] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 15, for " all documents " (w.e.f. 1.7.2002).] in his possession or power upon which he intends to rely in support of his case.

High Court Amendments-[Delhi].-Same as that of Punjab-(5-9-1966).[Himachal Pradesh].-Same as that of Punjab-(25-1-1971).[Punjab].-Substitute the following for rule 7:"The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he bases his defence or any claim for set-off and shall further order that where he relied on any other documents (whether in his possession or power or not) as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement."-(1-11-1966).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

## **8. On issue of summons for final disposal, defendant to be directed to produce his witnesses. -**

Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.**Service Of Summons**

## **9. Delivery or transmission of summons for service. -**

(1)Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.(2)The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.(3)The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (!) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules

made by the High Court:(4)Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of dsummons as is referred to in sub-rule (3)(except by registered post acknowledgment due), the provisions of rule 21 shall not apply.(5)When aan acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for nay other reason, has not been received by the Court within thirty days from the date of issue of summons.(6)The High Court or the District Judge, as the case may be, shall prepare a panel or courier agencies for the purposes of sub-rule (1).

## **9A. Summons given to the plaintiff for service.-**

(1)The Court may, in addition -to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.(2)The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.(3)The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.(4)If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

High Court Amendments-[Allahabad].-Add the following as sub-rule (3) to rule 9-"(3) In lieu of, or in addition to, the procedure indicated in sub-rule (1), such summons may be served by sending it by registered post addressed to the defendant at the place where he resides or carries on business or works for gain or to the agent at the place where he resides. Unless the cover is returned undelivered by the Post Office on account of want of proper address or any other sufficient reason, the summons may be deemed to have been delivered to the addressee at the time when it should have reached him in the ordinary course."-(29-3-1958 and 14-4-1962).[Andhra Pradesh].-Same as that of Kerala.[Kerala].-Add the following after rule 9(2):"(3) Where the defendant resides in India, whether within the jurisdiction of the Court in which the suit is instituted or not, the Court may direct the proper officer to cause a summons under this Order to be addressed to the defendant at the place where he ordinarily resides, or carries on business or works for gain and sent to him by

registered post, prepaid for acknowledgment. An acknowledgment purporting to be signed by the defendant shall be deemed to be sufficient proof of service of such summons."-(9-6-1959).[N.B.-These High Court Amendments relate to the provisions as existed before the 2002 Amendment Act.]

## **10. Mode of service. -**

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Add the following proviso to rule 10:"Provided that, in any case the Court may either on its own motion or on the application of the plaintiff, either in the first instance or when summons last issued is returned unserved direct the service of summons by registered post prepaid for acknowledgment, instead of the mode of service laid down in this rule. The postal acknowledgment purporting to contain the signature of the defendant may be deemed to be prima facie proof of sufficient service of the summons on the defendant on the day on which it purports to have been signed by him. If the postal cover is returned unserved, any endorsement purporting to have been made thereon by the delivery peon or either an employee or officer of the Postal Department shall be prima facie evidence of the statements contained therein."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Patna].-Add the following:"Provided that in any case the Court may, of its own motion, or on the application of the plaintiff, send the summons to the defendant by post in addition to the mode of service laid down in this rule. An acknowledgment purporting to be signed by the defendant or an endorsement by postal servant that the defendant refused to take delivery may be deemed by the Court issuing the summons to be prima facie proof of service."[Punjab].-Add the following proviso:"Provided that in any case if the plaintiff so wishes, the Court may serve the summons in the first instance by registered post (acknowledgment due) instead of in the mode of service laid down in this rule."-(1-11-1966).[Rajasthan].-Add the following proviso:"Provided that in any case the Court may in its discretion send the summons to the defendant by registered post in addition to the mode of service laid down in this rule. An acknowledgment purporting to be signed by the defendant or an endorsement by postal -servant that the defendant refused to take the delivery may be deemed by the Court issuing the summons to be prima facie proof of service."-(14-8-1954).

## **11. Service on several defendants. -**

Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

## **12. Service to be on defendant on person when practicable, or on his agent. -**

Wherever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

### **13. Service on agent by whom defendant carries on business. -**

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service. (2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or chartered.

### **14. Service on agent in charge in suits for immovable property. -**

Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

### **15. [ Where service may be on an adult member of defendant's family.**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 15 (w.e.f. 1.2.1977).]-Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him. Explanation.-A servant is not a member of the family within the meaning of this rule.]

High Court Amendments-[Allahabad].-For the words "Where in any suit the defendant cannot be found", read "When the defendant is absent or cannot be personally served".-(24-7-1926).[Andhra Pradesh].-Same as that of Madras.[Assam].-Same as that of Calcutta.[Bombay].-For the existing rule 15 and its marginal note, substitute the following as rule 15 and marginal note:"15. Where service may be on male member of defendant's family.-When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him. Explanation.-A servant is not a member of the family within the meaning of this rule."-(1-10-1983).[Calcutta].-For rule 15 substitute the following:"15. Where in any suit the defendant is absent from his residence at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time, then unless he has an agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him: Provided that where such adult male member has an interest in the suit and such interest is adverse to that of the defendant, a summons so served shall be deemed for the purposes of the third column of Article 164 of Schedule I of the Limitation Act, 1908, not to have been duly served. Explanation.-A servant is not a member of the family within the meaning of this rule."[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 15 and substitute the following:"15. Where in any suit the defendant is absent from his residence at the time when service

is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time, then unless he has an agent duly empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant (not being a servant) who is residing with him: Provided that where such adult male member has an interest in the suit and such interest is adverse to that of the defendant, summons so served shall be deemed for the purposes of rule 13 of Order IX of this Code or of the 3rd column of Article 123 of the Schedule of the Limitation Act, 1963, not to have been duly served."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In rule 15, for the word "male" in the marginal note, the word "adult" shall be substituted and the word "male" in the rule shall be omitted.-(9-6-1959).[Madhya Pradesh].-Same as that of Allahabad-(16-9-1960).[Madras].-In rule 15 of Order 5, delete the words "the defendant cannot be found" and in lieu thereof insert the words "the defendant is absent".[Punjab].-In rule 15 after the words "where in any suit the defendant cannot be found", insert "or is absent from his residence".[Rajasthan].-Same as that of Allahabad.

## **16. Person served to sign acknowledgement. -**

Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

## **17. Procedure when defendant refuses to accept service, or cannot be found.**

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Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, [who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

High Court Amendments-[Assam].-Same as that of Calcutta.[Calcutta].-Substitute the following:"  
17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is absent from his residence at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person upon whom service can be made, the serving officer shall affix a copy of the

summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was so affixed."-(25-7-1928).[Karnataka].-Delete rule 17 and substitute the following:"17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is not present at the house in which he ordinarily resides or carries on business or personally works for gain at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time and there is no agent empowered to accept service of the summons on his behalf nor any other person upon whom service can be made under rule 15, the serving officer shall affix a copy of the summons on the outer door of or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was so affixed."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madhya Pradesh].-The following proviso shall be inserted, namely:"Provided that where a special service has been issued and the defendant refuses to sign the acknowledgment, it shall not be necessary to affix a copy as directed hereinbefore."-(16-9-1960).

## **18. Endorsement of time and manner of service. -**

The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Order 5, Rule 18-A-High Court Amendments-[Andhra Pradesh].-Add the following as rule 18-A:-"18A. Chief Ministerial Officer, District Court, may be empowered to order issue of fresh summons.-A District Judge, within the meaning of the Madras Civil Courts Act, 1873, may delegate to the Chief Ministerial Officer of the District Court the power to order the issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within seven days after the return has been notified on the Notice Board."[Karnataka].-Add the following as rule 18-A:"18A. The Presiding Officer of a Civil Court may delegate to the Chief Ministerial Officer of the Court, the power to order issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within 7 days after he has been required to deposit the necessary process fee for the issue of fresh summons. If the plaintiff objects, the matter shall be placed before the Presiding Officer for his orders."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madras].-For rule 18-A, substitute the following:"18A. A District Judge, a Subordinate Judge and a District Munsif within the meaning of the Madras Civil Courts Act, 1873, and a City Civil Judge within the meaning of the Madras City Civil Courts Act, 1892, may delegate to the Chief Ministerial Officer of their respective Courts the



power to issue fresh summons to a defendant when (i) the return on the previous summons is to the effect that the defendant was not served, and (ii) the plaintiff does not object to the issue of fresh summons within seven days after the return has been notified on the Notice Board."-(9-11-1955).

## **19. Examination of serving officer.. -**

Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

High Court Amendments-[Assam].-Same as that of Calcutta.[Calcutta].-Substitute the word "declaration", for the word "affidavit".

**19A. [ Simultaneous issue of summons for service by post in addition to personal service. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]- ]Omitted by the Code of Civil Procedure (Amendment Act 1999 (46 of 1999), section 15 (w.e.f. 1.7.2002).]**

High Court Amendments-[Assam].-Same as that of Calcutta.[Bombay].-In sub-rule (1) for the word "shall", substitute "may" and delete the proviso.-(1-10-1983).[Calcutta].-Add after rule 19:"19A. A declaration made and subscribed by a serving officer shall be received as evidence of the facts as to the service or attempted service of the summons."[Madras].-For rule 19-A, the following rule shall be substituted, namely:"(1) The Court shall, in addition to and simultaneously with the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive) also direct the summons to be served by registered post, acknowledgment due; either through an officer of Court or by the plaintiff personally, addressed to the defendant or his agent empowered to accept the service at the place where the defendant or his agent, actually and voluntarily resides or carries on business or personally works for gain:Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.(2)(i) Where an acknowledgment purporting to be signed by the defendant or his agent is received by this Court, or is filed into Court by the plaintiff together with an affidavit, sworn to by the plaintiff as to the manner of service, such service shall be deemed to be sufficient proof of service of summons in the suit.(ii) Where the summons sent by registered post by an officer of Court is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing such summons may declare that the summons had been duly served on the defendant.(iii) Where, however, the plaintiff files into Court an affidavit sworn to by him, stating that the postal article containing the summons is received back by him with an endorsement purporting to have been made by a postal employee that the defendant or his agent had refused to take delivery of the postal articles containing the summons, together with the returned postal article containing the summons, the Court issuing such summons shall not declare that the summons had been duly served on the defendant. "-(10-9-1986).[N.B.-These High Court Amendments relate to the provisions as existed

before the 1999 Amendment Act.]

## **20. Substituted service. -**

(1)Where the Court is satisfied that there is preason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.(1A)[Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)Effect of substituted service.-Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.(3)Where service substituted, time for appearance to be fixed.-Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

High Court Amendment-[Punjab, Haryana and Chandigarh].-In rule 20, add the following proviso to rule 1:"Provided that if service in the ordinary manner or by registered post is not effected for the first date of hearing, the Court may direct substituted service, in such manner as the Court may deem fit, even if no application is made by or on behalf of the plaintiff for that purpose."-(Punjab 11-4-1975; Haryana 25-3-1975; Chandigarh 1-5-1975).

## **20A. [Service of summons by post.] Repealed by the Code of Civil Procedure (Amendment) Act, 1976 ( 104 of 1976), Section 55 (w.e.f. 1-2-1977).**

Order 5, Rule 20-BHigh Court Amendment-[Punjab, Haryana and Chandigarh].-In Order 5, after existing rule 20-A, insert the following:"20B. 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 to attend Court on that day."-(Notification No. G.S.R. 70/C.A. 5/8/ Section 127/Amd. /93, dated 27-8-1993.

## **21. Service of summons where defendant resides within jurisdiction of another Court. -**

A summons may sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

High Court Amendments-[Allahabad].-Rule 21 has been renumbered as sub-rule (1) and the following has been added as sub-rule (2):"(2) In lieu of, or in addition to, the procedure indicated in

sub-rule (1), such summons may also be served by sending it by registered post addressed to the defendant at the place where he ordinarily resides or carries on business or works for gain. Unless the cover is returned undelivered by the post office on account of want of proper address, or other similar reason, the summons may be deemed to have been delivered to the addressee at the time when it should have reached him in the ordinary course."-(1-6-1957).[Andhra Pradesh].-To rule 21, the following proviso shall be added, namely:-"Provided that summons intended for service in the twin cities of Hyderabad and Secunderabad shall be sent to the City Civil Court, Hyderabad at Secunderabad."-(23-3-1967).[Punjab, Haryana and Chandigarh].-For existing rule 21, substitute the following rule:"21. A summons may be sent by the Court by which it is issued, whether within or without the State, either by one its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides:Provided that where the defendant resides within the State at a place not exceeding sixteen kilometers from the place where the Court is situate, a summons may be delivered or sent by the Court to one of its officers to be served by him or one of his subordinates."-(w.e.f. 12-9-1978).Order 5, Rule 21-A[Gujarat].-In Order 5, after the existing rule 21, insert the following rule with marginal note as new rule 21-A and its marginal note:"21A. Service of summons by pre-paid post wherever the defendant may be residing if plaintiff so desires.-The Court may notwithstanding anything in the foregoing rules and whether the defendant resides within the jurisdiction of the Court or not, cause the summons to be addressed to the defendant at the place where he is residing, and sent to him by registered post, pre-paid for acknowledgment, provided that at such place there is a regular daily postal service. An acknowledgment purporting to be signed by the defendant shall be deemed by the Court issuing the summons to be prima facie proof of service. In all other cases the Court shall hold such enquiry as it thinks fit and declare the summons to have been duly served or order such further service as may in its opinion be necessary."-(17-8-1961).

## **22. Service within presidency-towns of summons issued by Courts outside. -**

Where as summons issued by any Court established beyond the limits of the towns of Calcutta, Madras [and Bombay] [Substituted by A.O. 1937, for " Bombay and Rangoon" .] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

High Court Amendments-[Gujarat].-Add the following proviso to rule 22:-"Provided that where any such summons is to be served within the limits of Greater Bombay, it may be addressed to the defendant at the place within such limits where he is residing and may be sent to him by the Court by post registered for acknowledgment. An acknowledgment purporting to be signed by the defendant or an endorsement purporting to be by a postal servant that the defendant refused service shall be deemed by the Court issuing the summons to be prima facie proof of service. In all other cases the Court shall hold such enquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may, in its opinion, be necessary."-(17-8-1961).[Rajasthan].-The following proviso be added to rule 22:"Provided that any such summons may instead be addressed to the defendant at the place within such limits where he is residing and may be sent to him by the Court by post registered for acknowledgment. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service shall be deemed by the Court issuing the summons to be prima

facie proof of service. In all other cases the Court shall hold such inquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may, in its opinion, be necessary."-(25-7-1957).

### **23. Duty of Court to which summons is sent. -**

The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

### **24. Service on defendant in prison. -**

Where the defendant is confined in a prison, the summons shall be delivered or sent [by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 15, for " by post or otherwise" (w.e.f. 1.7.2002).] to the officer in charge of the prison for service on the defendant.

### **25. Service where defendant resides out of India and has no agent. -**

Where the defendant resides out of [India] [ Substituted by Act 2 of 1951, Section 3, for " the states" .] and has no agent in [India] [ Substituted by Act 2 of 1951, Section 3, for " the states" .] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him [by post or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 15, for " by post" (w.e.f. 1.7.2002).], if there is postal communication between such place and the place where the Court is situate :Provided that where any such defendant [resides in Bangladesh or Pakistan] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for " resides in Pakistan" (w.e.f. 1.2.1977).] the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:Provided further that where any such defendant is a public officer [in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military naval or air forces)] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977).] or is servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.

High Court Amendments-[Allahabad].-Substitute the following for rule 25:"25. Where the defendant resides out of India and has no agent in India empowered to accept service, the summons, unless the Court otherwise directs, be addressed to the defendant at the place where he is residing and sent to him, by registered post, if .there is postal communication between such place and the place where the Court is sitting. Unless the cover is returned undelivered by the Post Office

on account of want of proper address or other similar reason, the summons may be deemed to have been delivered to the addressee at the time when it should have reached him in ordinary course."-(29-3-1958 and 14-4-1962).[Andhra Pradesh.-Same as that of Madras, except omit the words "British" wherever it occurs and delete the existing proviso.[Karnataka].-Delete rule 25 and substitute the following:"25. (1) Where the defendant resides outside the State of Mysore but within the territories of India, the Court may direct the proper officer within the meaning of rule 9 to cause the summons to be addressed to the defendant at the place where he ordinarily resides or carries on business, or works for gain and sent to him by registered post prepaid for acknowledgment. When it is so sent by registered post, the provisions of the proviso to rule 10 shall apply thereto.(2) Where the defendant resides out of India and has no agent in India empowered to accept service, the summons may be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate: Provided that, if by any arrangement between the Central Government and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in the same manner as by the said arrangement may have been agreed upon: Provided further that, where any such defendant resides in Pakistan, the summons together with a copy thereof, may be sent for service on the defendant to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides: Provided further that, where any such defendant is a public officer in Pakistan (not belonging to Pakistan military, naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette specify in that behalf."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In rule 25(i) the following shall be added before the existing provisos, namely:"Provided that, if by any arrangement between the Government of the State in which the Court issuing summons is situate and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in such manner as by the said arrangement may have been agreed upon."(ii) in the last proviso for the word "company", the word "Administration" shall be substituted.-(9-6-1959).[Madhya Pradesh].-For the word "shall", substitute the word "may".-(16-9-1960).[Madras].-Substitute the following for rule 25:"25. Service where defendant resides out of British India and has no agent.-Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons may be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate: Provided that if, by any arrangement between the Government of the province in which the Court issuing summons is situate and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in such manner as by the said arrangement may have been agreed upon. Note.-The proviso to rule 25 was omitted with effect from 23-12-1964.[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]Order 5, Rule 25-A[Allahabad].-Add the following as rule 25-A:"25A. Where the defendant resides out of India but has an agent empowered to accept service of summons on his behalf residing in India but outside the jurisdiction of the Court, the summons, unless directed otherwise by the Court, may be addressed to such agent and

sent to him by registered post if there is postal communication between such place and the place where the Court is sitting. Unless the cover is returned undelivered for want of proper address or any other sufficient reason, the summons may be deemed to have been delivered to the address at the time when it should have reached him in ordinary course."-(14-4-1962).[Madhya Pradesh].-Add the following as rule 25-A:"25A. Service where defendant resides in India but outside Madhya Pradesh.--Where the defendant resides in India but outside the limits of Madhya Pradesh, the Court may, in addition to any other mode of service, send the summons by registered post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by him or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be prima facie proof of service."-(16-9-1960).

**26. [ Service in foreign territory through Political Agent or Court. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 26 (w.e.f. 1.2.1977).]-**

Where-(a)in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or(b)the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service, the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant: and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

High Court Amendments-[Allahabad].-After the words "the summons may", insert the words "in addition to, or in substitution for the method permitted by rule 25".-(24-7-1926).[Andhra Pradesh].-Same as that of Madras-(9-8-1957).[Gujarat].-Insert in rule 26 "in addition to or in substitution for the method permitted by rule 25", between the words "may" and "be sent".-(17-8-1961).[Karnataka].-Delete rule 26 and substitute the following:-"26. Where(a) in the exercise of any foreign jurisdiction vested in the Central Government, a political agent has been appointed, or a Court has been established or continued with power to serve a summons or process issued by a Court under this Code in any foreign territory in which the defendant resides, or(b) the State Government has, by notification in the Official Gazette declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons or process issued under this Code by a Court of the State shall be deemed to be valid service, or(c) by any arrangement between the Central Government and the Government of the foreign territory in which the defendant resides, the summons or process may be served by an officer of the Government of such territory, the summons

or process may be sent to such Political Agent, Court or officer through the Ministry of the Central Government dealing in the external affairs, or such officers as maybe specified in the notification in this behalf by the State Government in the Official Gazette, and if such Political Agent, Court or other officer specified returns the summons with an endorsement signed by the Judge or other officer of such Court or by the other officer specified that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service."-(R.O.C. No. 2526/ 1959, dated 9-2-1967).[Kerala].-For rule 26, the following rule shall be substituted, namely:"26. Service in foreign territory through Political Agent or Court or by special arrangement.-Where(a) In the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed or a Court has been established or continued, with power to serve a summons or process issued by a Court under this Code in any foreign territory in which the defendant resides, or(b) the State Government has, by notification in the Official Gazette declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons or process issued under this Code by a Court of the State shall be deemed to be valid service, or(c) by any arrangement between the Government of the State in which the Court issuing the summons or process is situate and the Government of the foreign territory in which the defendant resides, the summons or process can be served by an officer of the Government of such territory, the summons or process may be sent to such Political Agent or Court in such manner as may have been agreed upon or to the proper officer of the Government of the foreign territory by post or otherwise for the purpose of being served upon the defendant; and if the summons or process is returned with an endorsement signed by such Political Agent or by the Judge or other officer of the Court or by the Officer of the Government of the foreign territory, that the summons or process has been served on the defendant in the manner hereinbefore directed such endorsement shall be deemed to be evidence of service."-(9-6-1959).Provided that the Court issuing the summons shall, if the State Government by a notification in the Official Gazette so directs, send the summons to the Government or other officer specified in that behalf of the foreign territory in which the Court, in respect of which a declaration has been made by the State Government under clause (b) is situated and in which the defendant resides, through the Ministry of the Central Government dealing with external affairs, or such officer as may be specified in the notification in this behalf for causing the summons to be served upon the defendant by such Court or other officer specified and if such Court or other officer specified returns the summons with an endorsement signed by the Judge or other officer of such Court or by the other officer specified that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service." (As amended with effect from 22-9-1964).[Madhya Pradesh].-Same as that of Gujarat-(16-9-1960).[Madras].-Substitute the following for rule 26:"26. Service in foreign territory through Political Agent or Court or by special arrangement.-Where(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed or a Court has been established or continued, with power to serve a summons or process issued by a Court under this Code in any foreign territory in which the defendant resides, or(b) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons or process issued under this Code by a Court in India shall be deemed to be valid service, or (sic.)the summons or process may be sent to

such Political Agent or Court, or in such manner as may have been agreed upon to the proper officer of the Government of the foreign territory, by post or otherwise, for the purpose of being served upon the defendant, and if the summons or process is returned with an endorsement signed by such Political Agent or by the Judge or other officer of the Court or by the officer of the Government of the foreign territory that the summons or process has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service." [Rajasthan].-In rule 26, the following proviso shall be inserted, namely: "Provided that the Court issuing the summons shall, if the State Government by notification in the Official Gazette so directs, send the summons to the Government or other officers specified in that behalf, of the foreign territory in which the Court in respect of which declaration has been made by the State Government under clause (b) is situated and in which the defendant resides, through the Ministry of the Central Government dealing with the External Affairs, or such officers as may be specified in the said notification in this behalf, for causing the summons to be served upon the defendant by such Court or the officer of the foreign territory as aforesaid, and if such Court or the officer returns the summons with an endorsement signed by the Judge or any officer of such Court of the aforesaid Officer of the foreign territory, that the summons has been served on the defendant in the manner hereinbefore directed such endorsement shall be deemed to be the evidence of service."-(S.R.O. No. 8, Jodhpur, 23-12-1964).

## **26A. Summonses to be sent to officer to foreign countries. -**

Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.]

## **27. Service on civil public or on servant of railway officer or on servant of railway company or local authority. -**

Where the defendant is a public officer (not belonging to [the Indian] [Substituted by A.O.1950, for "His Majesty's"] military [naval or air] [Substituted by Act 10 of 1927, Section 2 and Sch.I, for " or naval".] forces [\*\*\*] [The words " or His Majesty's Indian Marine Service" omitted by Act 35 of 1934, Section 2.], or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed together with a copy to be retained by the defendant.

High Court Amendments-[Allahabad].-To rule 27, add the following as note (1) and note (2): "Note (1). A list of heads of offices to whom summons shall be sent for service on the servants of Railway companies working in whole or in part in these States is given in Appendix II of the General Rules



(Civil).-(22-5-1915).Note (2). In every case where a Court sees fit to issue a summons, direct to any public servant other than a soldier under Order 16, simultaneously with the issue of the summons, notice shall be sent to the head of the office in which the person concerned is employed, in order that arrangements may be made for the performance of the duties of such person.Illustration.-If the Court sees fit to issue a summons to a kanungo or lekhpal it shall inform the Collector of the district, and if to a Sub-Registrar it shall inform the District Registrar to whom the Sub-Registrar is subordinate."-(1-3-1916).[Andhra Pradesh].-Same as that of Madras.[Bombay].-For the existing rule 27 and its marginal note, substitute the following as rule 27 and marginal note:"27. Service on civil public officer or on servant of railway administration or local authority.- Where the defendant is a public officer not belonging to the Indian Military, Naval or Air Forces, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it by registered post pre-paid for acknowledgement for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant."-(1-10-1983).[Karnataka].-Same as that of Bombay-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-in Order 5, for rule 27, the following rule shall be substituted, namely:"27. Service on civil public officer or on servant of railway administration or local authority.-Where the defendant is a public officer (not belonging to the Indian Military, Naval or Air Forces) or is the servant of Railway Administration or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it by registered post pre-paid for acknowledgement for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant."-(9-6-1959).[Madras].-In Order 5, rule 27, after the words "send it", insert the words "by registered post pre-paid for acknowledgement".

## **28. Service on soldiers, sailors or airmen. -**

Where the defendant is a soldier, [sailor] [Inserted by Act 35 of 1934, Section 2 and Sch.] [or airman] [Inserted by Act 10 of 1927, Section 2 and Sch.I], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

High Court Amendments-[Allahabad].-The present rule 28 shall be re-numbered as 28(1), and add the following:(2) Where the address of such Commanding Officer is not known, the Court may apply to the Officer Commanding the station in which the defendant was serving when the cause of action arose to supply such address, in the manner prescribed in sub-rule (4) of this rule.-(5-3-1927).(3) Where the defendant is an officer of the Indian military forces, wherever it is practicable, service shall be made on the defendant in person.-(5-3-1927).(4) Where such defendant resides outside the jurisdiction of the Court in which the suit is instituted, or outside India the Court may apply over the seal and signature of the Court to the Officer Commanding the station in which the defendant was residing when the cause of action arose, for the address of such defendant, and the Officer Commanding to whom such application is made shall supply the address of the defendant or all such information that it is in his power to give, as may lead to the discovery of his address.- (5-3-1927).(5) Where personal service is not practicable, the Court shall issue the summons to the defendant at the address so supplied by registered post."-(5-3-1927).[Andhra Pradesh].-Same as that of Madras.[Bombay].-Same as that of Madras-(1-10-1983).[Karnataka].-Delete rule 28 and substitute the following:"28. Where the defendant is a soldier, sailor or airman, the Court shall send by registered post pre-paid, for

acknowledgment the summons for service on the defendant to his commanding officer together with a copy to be retained by the defendant."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-In Order 5, rule 28, after the words "shall send", insert the words "by registered post pre-paid for acknowledgment".

## **29. Duty of person to whom summons is delivered or sent for service. -**

(1)Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.(2)Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

High Court Amendments-[Allahabad].-In rule 29, sub-rule (1), for the words "rule 28", read "rule 28(1)".-(5-3-1927).Order 5, Rule 29-A[Andhra Pradesh].-Same as that of Madras-(29-8-1957).[Karnataka].-Add the following as rule 29-A:"29A. Notwithstanding anything contained in the foregoing rules, where the defendant is a public officer (not belonging to military, naval or air forces) sued in his official capacity, service of summons shall be made by sending a copy of the summons to the defendant by registered post pre-paid for acknowledgment together with the original summons, which the defendant shall sign and return to the Court which issued the summons."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Insert the following as rule 29-A of Order 5:"29A. Notwithstanding anything contained in the foregoing rules, where the defendant is a public officer (not belonging to the Military, Naval or Air Forces of India) sued in his official capacity, service of summons shall be made by sending a copy of the summons to defendant by registered post pre-paid for acknowledgment together with the original summons, which the defendant shall sign and return to the Court which issued the summons."

## **30. Substitution of letter for summons. -**

(1)The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.(2)A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.(3)A letter so substituted may be sent to the defendant by spot or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

High Court Amendments-Rules 31 and 32-[Allahabad].-To Order 5, add the following as rules 31 and 32:"31. An application for the issue of summons for a party or a witness shall be made in the form prescribed for the purpose. No other forms shall be received by the Court.32. Ordinarily every process, except those that are to be served on Europeans, shall be written in the Court vernacular. But where a process is sent for execution to the Court of a district where a different language is in

ordinary use, it shall be written in English and shall be accompanied by a letter in English requesting its execution.-(22-5-1915).In cases where the return of service is in a language different from that of the district from which it is issued, it shall be accompanied by an English translation."-(19-3-1921).Rule 31-[Andhra Pradesh].-Same as that of Madras.-(29-8-1957).Rules 31 to 34-[Karnataka].-Add the following rules at the end of the Order 5:-"31.(1). The Court may on the application of the plaintiff and on such terms as to security or otherwise as the Court thinks fit, dispense with the service of summons on a defendant who is a resident in a territory belonging to or occupied by a State at war with the Central Government:Provided that an order dispensing with the service of summons shall not be made unless the Court is satisfied that the defendant is a resident in such territory and that the service of summons on him in the manner prescribed by this Code is not possible.(2) The Court may before making any such order direct such publication of the application as it considers necessary in the circumstances.(3) Where in any suit an order dispensing with the service of summons on a defendant is made under this rule and a decree or order is passed against him, the Court may on his application and on such terms as may be just set aside such decree or order and appoint a day for proceeding with the suit.(4) The provisions of the first proviso to rule 13 of Order 9 of this Code and the provisions of rule 14 of the said Order shall apply to an order setting aside the decree or order made under sub-rule (3).(5) The application under sub-rule (3) shall be filed within one year from the date of cessation of hostilities with the said State.(6) The provisions of section 5 of the Limitation Act, 1963 shall apply to applications under sub-rule (3).(7) The provisions of this rule shall apply mutatis mutandis to a respondent in an appeal or a civil revision petition who is resident in such territory as is referred to in sub-rule (1).32. Where any party in a suit is represented by a pleader, the plaint or the written statement, as the case may be, shall give the address of the pleader within the local limits of the city, town or place where the Court is situate and the said address of the pleader shall be the address for service on the party represented by the said pleader for purposes of all notices and processes issued in the suit. All such notices and processes in the suit or in any interlocutory matter in the suit shall be sufficiently served if left by a party or pleader or by a person employed by the defendant or by an officer or employee of the Court at the said address for service of the party intended to be served.33. Unless the Court otherwise directs, notice of an interlocutory application in the suit need not be served on a party who having been duly served with summons in the main suit has failed to appear and has been declared ex parte by the Court:Provided that the Court shall direct such notice to be issued and served on any such party in applications for the amendment of any pleading in the suit, if the Court is of the opinion that such party may be interested in or affected by the proposed amendment.34. The provisions of rules 32 and 33 shall also apply mutatis mutandis to appeals and revision petitions."-(R.O.C. No. 2526/1959, dated 9-2-1967).Rule 31-[Kerala].-Same as in Madras, except that the words "the Government" are substituted for "India".-(9-6-1959).Rule 31-[Madras].-Add the following after rule 30:"31.(1) The Court may, on the application of the plaintiff and on such terms as to security or otherwise as the Court thinks fit, dispense with the service of summons on a defendant who is resident in the territory belonging to or occupied by a State at war with India:Provided that an order dispensing with service of summons shall not be made unless the Court is satisfied that the defendant is resident in such territory and that service of summons on him in the mode prescribed by the Code is not possible.(2) The Court may, before making the said order, direct such publication of the application as it considers necessary in the circumstances.(3) Where in any suit an order dispensing with service of summons on a defendant is

made under this rule, and a decree or order is passed against him, the Court may on his application, and on such terms as may be just set aside such decree or order and appoint a day for proceeding with the suit.(4) The provisions of the first proviso to rule 13 of Order 9 and the provisions of rule 14 of the said Order shall apply to an order setting aside a decree or order under sub-rule (3).(5) The application under sub-rule (3) shall be filed within one year from the date of cessation of hostilities with the said State.(6) The provisions of section 5 of the Indian Limitation Act shall apply to application under sub-rule (3).(7) The provisions of this rule shall apply mutatis mutandis to a respondent in an appeal or a revision petition, who is resident in such territory as is referred to in sub-rule (1)."

## **ORDER – VI**

### **Pleading generally**

#### **1. Pleading. -**

"Pleading", shall mean plaint or written statement.

#### **2. [ Pleading to state material facts and not evidence.**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 2 (w.e.f. 1.2.1977).]-(1)Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.(2)Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.(3)Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.]

#### **3. Forms of pleading. -**

The forms in Appendix A when applicable, and where they are not applicable forms of the like character, nearly as may be, shall be used for all pleadings.

#### **3A. Forms of pleading in Commercial Courts—**

In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms. [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015)]

#### **4. Particulars to be given where necessary. -**

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond

such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

High Court Amendments-[Karnataka].-Renumber rule 4 as rule 4(1) and add the following as sub-rule (2):"(2) In a suit for infringement of a patent, the plaintiff shall state in his plaint or annex thereto the particulars of the breaches relied upon, and the defendant if he disputes the validity of the patent shall state in his written statement or annex thereto the particulars of the objections on which he relies in support of such invalidity; at the hearing of any such suit no evidence shall, except with the leave of the Court (to be given upon such terms as to the Court may seem just), be admitted in proof of any alleged infringement or objections not raised in the particulars of breaches or objections respectively."-(R.O.C. No. 2526/1959, dated 9-2-1967).Order 6, Rule 4A[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-After rule 4, the following rule shall be inserted, namely:"4A. (1) In a suit for infringement of a patent, the plaintiff shall state in his plaint or annex thereto the particulars of breaches relied upon.(2) In any such suit the defendant if he disputes the validity of the patent shall state in his written statement or annex thereto the particulars of the objections on which he relies in support of such invalidity.(3) At the hearing of any such suit no evidence shall, except by leave of the Court (to be given upon such terms as to the Court may seem just), be admitted in proof of any alleged infringement or objections not raised in the particulars of breaches or objections respectively."Madhya Pradesh.-After rule 4, the following rule shall be inserted, namely:-"4A. Particulars of pleading for agricultural land.- In any suit or proceeding contemplated under rule 3-B of Order 1, the parties, other than the State Government, shall plead the particulars of total agricultural land which is owned, claimed or held by them in any right and shall further declare whether the subject-matter of suit or proceeding is or is not covered by Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (20 of 1960), and whether any proceedings in relation to such subject-matter are to the knowledge of the party pending before the competent authority."-[M.P. Act 29 of 1984]

## **5. Further and better statement, or particulars. -**

[Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), section 16 (w.e.f. 1.7.2002).]

High Court Amendments-[Bombay]-In Order VI, for the existing rule 5 and its marginal note, substitute the following as rule 5 and marginal note:"5. Further and better statement, or particulars.-(1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered upon such terms, as to costs and otherwise, as may be just.(2) No application for further and better particulars from the plaintiff or the defendant except the one given by the defendant on or before the returnable date of the summons or by the plaintiff on or before the first date fixed for hearing after the filing of the written statement, shall be entertained, unless the plaintiff or the defendant assigns good cause for the same.(3) After filing the written statement, the Court shall fix a date for (1) reception of documents other than those in possession or power of parties, and (ii) applications for interrogatories, discovery of documents and the inspection thereof. Such applications should not be entertained thereafter, unless good cause is shown to the satisfaction of the Court."-(1-10-1983).[Karnataka].-Renumber rule 5 as rule 5(1) and add the following as sub-rule

(2):"(2) In a suit for infringement of a trade mark or copyright, the Court may either on its own motion or on the application of any party apply the provisions of sub-rule (2) of rule 4 of this Order so far as the circumstances of the case may allow."-(R.O.C. No. 2526/1959, dated 9-2-1967).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

## **6. Condition precedent. -**

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

## **7. Departure. -**

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

## **8. Denial of contract. -**

Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied and not as a denial of the legality or sufficiency in law of such contract.

## **9. Effect of document to be stated.. -**

Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

## **10. Malice, knowledge, etc.,. -**

Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

## **11. Notice. -**

Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred are material.

## **12. Implied contract, or relation. -**

Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letter, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

## **13. Presumptions of law. -**

Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g. consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim.)

## **14. Pleading to be signed. -**

Every pleading shall be signed by the party and his pleader (if any) :Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

High Court Amendment-[Karnataka].-Renumber rule 14 as rule 14(2) thereof and insert the following as sub-rule (1):"(1) Every pleading shall contain the party's full address for service, that is to say, full address of his place of residence as well as place of business, if any, in addition to his pleader's address for service as required by rule 32 of Order V of this Code. Such address for service furnished by the party, unless a change therein has been notified to the Court by filing a memorandum to that effect, shall be presumed to be his correct address for service for purposes of the suit, any appeal or revision or other proceeding directed against the decree or order passed in that suit. When a memorandum of change of address is filed by any party, a note to that effect shall be made in the cause title of the pleading and if the pleading happens to be the written statement also in the cause title of the plaint."-(R.O.C. No. 2526/1959, dated 9-2-1967.)

## **14A. [ Address for service of notice. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

(1)Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.(2)Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.(3)The address furnished in the statement made sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the

cause or matter.(4)Service of any process may be effected upon a party at his registered address in all respects as though such party resided there at.(5)Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-(a)in the case where such registered address was furnished by a plaintiff, stay of the suit, or(b)in the case where such registered address was furnished by a defendant, his be struck out and he be placed in the same position as if he had not put up and defence.(6)Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.(7)the Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such term as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.(8)Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.]

High Court Amendments-[Assam].-Same as that of Calcutta.[Bombay].-Substitute the following sub-rules (1) to (4) for existing sub-rules (1) to (4) of rule 14:"14A. Address for service of notice.-(1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party. Parties subsequently added shall immediately on being so added file a memorandum in writing of this nature.(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition. Notice of such change shall be given to such other parties as the Court may deem it necessary and the form showing the change may be served either on the pleaders or such parties or be sent to them by registered post pre-paid for acknowledgment as the Court thinks fit.(3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good subject as aforesaid, for a period of six years after the final determination of the cause or matter.(4)(i) Where a party is not found at the registered address and no agent or adult male member of his family, on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to registered address of that party by registered post pre-paid for acknowledgment (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice of process had been personally served.(ii) Where a party engages a pleader, notice or process issued against the party shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the registered address of the party.(5) Where the registered address of a party is not filed within the specified time or is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order(a) in case where the default in furnishing registered address is by the plaintiff or where such registered address was furnished by a plaintiff, rejection of the plaint, or(b) in case where the default in furnishing registered address is by the defendant or where such registered address was furnished by a defendant, his defence is struck out



and he be placed in the same position as if he had not put any defence.(6) Where a plaint is rejected or defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant after furnishing his true address, apply to the Court for an order to set aside the rejection of the plaint or, as the case may be, the orders striking out the defence.(7) The Court is satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the rejection of the plaint or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence as the case may be.(8) Where a party is not found at the registered address and no agent or adult member of his family on whom a notice or process can be served is present, a copy of the notice or process, shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgment (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.(9) Where the Court has struck out the defence under sub-rule (5) and has consequently passed a decree or an order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order setting aside the decree or order and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or proceeding, provided that where the decree or order is of such a nature that it cannot be set aside as against such defendant or opposite party only, it may set aside as against all or any of the defendants or opposite party.(10) Nothing in this rule shall prevent the Court from directing service of a process at any other address, if for any reason it thinks fit to do so.(11) Where a party engages a pleader, a notice or process issued against the party shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the registered address of the party."-(1-10-1983).[Calcutta].-Add the following:"14A. Every pleading when filed shall be accompanied by a statement in a prescribed form, signed as provided in rule 14 of this Order, of the party's address for service. Such address may from time to time be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition. The address so given shall be called the registered address of the party and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purposes of execution and shall hold good subject as aforesaid for a period of two years, after the final determination of the cause of matter. Service of any process may be effected upon a party at this registered address in all respects as though such party resided thereat."-(25-7-1928).

## **15. Verification of pleadings. -**

(1)Save as otherwise provided by any law for the time being in force, every pleading shall be varied at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.(2)The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.(3)The verification shall be signed by the person making it and shall state the date on which and the place at

which it was signed.(4)[ The person verifying the pleading shall also furnish an affidavit in support of his pleadings.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 16 (w.e.f. 1.7.2002).]

### **15A. Verification of pleadings in a commercial dispute—**

(1)Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.(2)An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.(3)Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.(4)Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.(5)The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.

High Court Amendments-[Bombay].-In Order VI, rule 15, substitute a colon for the full stop at the end of sub-rule (1) and add thereafter the following proviso:"Provided that in respect of pleadings to be filed in the Bombay City Civil Court such verification shall, within the local jurisdiction of the Court, be made before one of the officers of the said Court empowered to administer oath, and elsewhere, before any officer mentioned in section 139 of the Code of Civil Procedure, 1908."-(1-10-1983).[Orissa].-Same as that of Patna-(w.e.f. 27-9-1961).[Patna].-For sub-rule (1), substitute the following:"Save as otherwise provided by any law for the time being in force, the facts stated in every pleading shall be verified by solemn affirmation or on oath of the party or of one of the parties pleading or of some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, before any officer empowered to administer oath under section 139 of the Code."-(27-9-1961).

### **16. [ Striking out pleadings. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 16 (w.e.f. 1.2.1977).]-**

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-(a)which may be unnecessary, scandalous, frivolous or vexatious, or(b)which may tend to prejudice, embarrass or delay the fair trial of the suit, or(c)which is otherwise an abuse of the process of the Court.]

### **17. [ Amendment of pleadings. [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 7, for rule 17 (w.e.f. 1.7.2002).]-**

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the

parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]

High Court Amendments-[Bombay].-In Order VI, for the existing rule 17 and its marginal note, substitute the following as rule 17 and marginal note: "17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Where, however, an application for amendment is made by the plaintiff in a suit in which the defendant has not appeared, though served with a summons, and where in the opinion of the Court the amendment applied for is a material one, the Court shall give notice of the application to the defendant before allowing the amendment; and where in the absence of the defendant the Court grants any amendment in a form materially different from that of which notice has been given to the defendant, a copy of the amended plaint shall be served on the defendant."-(1-10-1983).[Gujarat].-Add the following to rule 17: "Where, however, an application for amendment is made by the plaintiff in a suit in which the defendant has not appeared though served with a summons, and where in the opinion of the Court the amendment applied for is a material one, the Court shall give notice of the application to the defendant before allowing the amendment; and where in the absence of the defendant the Court grants any amendment in a form materially different from that applied for, a copy of the amended plaint shall be served on the defendant."-(17-8-1961).[Orissa].Re-number rule 17 as sub-rule (1) thereof and add the following as sub-rule (2): "(2) Every application for amendment shall be in writing and duly verified in the manner laid down in rule 15 and shall state the specific amendments which are sought to be made, indicating the words or paragraphs to be added to, omitted from or substituted in place of, the original pleading."-(14-5-1984).[Punjab, Haryana and Chandigarh].-Re-number rule 17 as sub-rule (1) thereof and add the following as sub-rule (2): "(2) Every application for amendment shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading."-(1-11-1966).[N.B.-These High Court Amendments relate to the provisions as existed before the 2002 Amendment Act.]

## **18. Failure to amend after order. -**

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

High Court Amendment-[Orissa].-For rule 18, substitute the following: "Where any party has obtained an order to amend and the amendment is extensive, within a time limited for that purpose by the order, or if no time is thereby limited, then, within fourteen days from the date of the order, he shall file a consolidated pleading incorporating the amendments, and he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court. In all other cases the Bench clerk shall carry out the amendment."-(25-5-1984).[N.B.-This High Court Amendment relates to the provisions as

existed before the 2002 Amendment Act.]

## **ORDER – VII**

### **Plaint**

#### **1. Particulars to be contained in plaint. -**

The plaint shall contain the following particulars:-(a)the name of the Court in which the suit is brought ;(b)the name, description and place of residence of the plaintiff;(c)the name, description and place of residence of the defendant, so far as they can be ascertained;(d)where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;(e)the facts constituting the cause of action and when it arose;(f)the facts showing that the Court has jurisdiction;(g)the relief which the plaintiff claims;(h)where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and(i)a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

High Court Amendments-[Andhra Pradesh].-Order 7, rule 1(d)-Same as that of Madras.[Bombay].-Order 7, rule 1(i)-In Order VII, rule 1, for the existing item (i) of particulars, substitute the following as item (i)."(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court-fees, so far as the case admits, showing the provisions of law under which the valuation for Court-fees and jurisdiction is separately made."-(1-10-1983).[Karnataka].-Delete rule 1 and substitute the following:-"1. The plaint shall contain the following particulars:-(a) the name of the Court in which the suit is brought;(b) the name, age, description, place of residence and place of business, if any, of the plaintiff;(c) the name, age, description, place of residence and the place of business, if any, of the defendant, so far as can be ascertained by the plaintiff;(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect and in the case of a minor, his age to the best of the knowledge and belief of the person verifying the plaint:Provided that, where, owing to the large number of defendants or any other sufficient cause, it is not practicable to ascertain with reasonable accuracy the age of the minor defendants, it may be stated that the age of the minor defendants is not known;(e) the facts constituting the cause of action and when it arose;(f) the facts showing that the Court has jurisdiction;(g) the relief which the plaintiff claims;(h) where the plaintiff has allowed a set-off or relinquished a portion of the claim, the amount so allowed or relinquished; and(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court-fees, so far as the case admits."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Order 7, rule 1(d)-Same as that of Madras but without the proviso.-(7-6-1959).[Madras].-Substitute the following for sub-clause (d) of rule 1:"(d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect, and in the case of a minor, a statement regarding his age to the best of the knowledge and belief of the person verifying plaint:Provided that, where, owing to the large number of defendants or any other sufficient reason, it is not practicable to ascertain with reasonable accuracy the age of the minor defendant, it may be stated that the age of the minor defendant is not known."[Punjab, Haryana and Chandigarh].-Insert the following new

clause (j) after existing clause (i):"(j) A statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results." [Noti. No. G.S.R. 17/C.Section 5/1908/S.122/78, dated 15-3-1991].

## **2. In money suits. -**

Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:But where the plaintiff sue for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, [or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977).].

High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 2 and substitute the following:"2. Where the plaintiff seeks for recovery of money, the plaint shall state the precise amount claimed, and wherever a statement of account or a memorandum of calculation is necessary for the purpose, such statement or memorandum shall be set out in the schedule to the plaint or separately annexed thereto.But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Punjab, Haryana and Chandigarh].-In the second paragraph of rule 2 of Order 7, after the word "defendant" insert "or for movables in the possession of the defendant, or for debts the value of which he cannot after the exercise of reasonable diligence, estimate" and after the word "amount" where it last occurs insert "or value".-(1-11-1966).

### **2A. Where interest is sought in the suit—**

(1)Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).(2)Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.(3)Pleadings shall also state—(a)the rate at which interest is claimed;(b)the date from which it is claimed;(c)the date to which it is calculated;(d)the total amount of interest claimed to the date of calculation; and (e) the daily rate at which interest accrues after that date.[Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015)]

## **3. Where the subject-matter of the suit is immovable property. -**

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or

numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

High Court Amendments-[Assam].-Same as that of Calcutta.[Bombay].-In Order VII, for the existing rule 3 and its marginal note, substitute the following as rule 3 and marginal note:"3. Where the subject-matter of the suit is immovable property.-Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. In case of encroachment a sketch showing as approximately as possible the location and extent of encroachment shall also be filed alongwith the plaint."-(1-10-1983).[Calcutta].Add at the end the words:"and where the area is mentioned, such description shall further state the area according to the notation used in the record of settlement or survey, with or without, at the option of the party, the same area in terms of the local measures".

#### **4. When plaintiff sues as representative. -**

Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

High Court Amendment -[Karnataka].-Delete runs 4 and substitute the following rule 4, namely :-"4.(1) Where the plaintiff sues in a representative character, the plaint shall show not only that he has an actual existing interest in the subject-matter, but also that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.(2) When the permission of the court under rule 8 of Order 1 of the Code is sought, before or at the time of the institution of the suit, the plaint shall be accompanied by an application supported by an affidavit stating the number or approximate number of parties interested, the places where they respectively reside, that they have all the same interest in the subject-matter of the suit and the nature of the said interest, and the best means of giving notice of the institution of the suit to the said parties. If the permission sought is granted, the plaint shall state or be amended so as to state that the plaintiff sues on behalf of himself and all other persons interested in the subject-matter of the suit and that he has been permitted by the Court to do so by an order of Court made on a particular date, in the application mentioned above."-(R.O.C. No. 2526/1959, dated 9.2.1967).

#### **5. Defendant's interest and liability to be shown. -**

The plaint shall show that the defendant is or claims to be interested in subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

#### **6. Grounds of exemption from limitation law. -**

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed :[Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.] [Added by

the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **7. Relief to be specifically stated. -**

Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

## **8. Relief founded on separate ground. -**

Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

## **9. Procedure on admitting plaint.-**

Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order alongwith requisite fee for service of summons on the defendants.

High Court Amendments-[Allahabad].-In rule 9(a). for the semicolon after "it" in clause (1) substitute a full stop and delete the rest of this clause as well as clauses (2) and (3); and re-number clause (4) as clause (2), deleting the words "or statements" therein.-(12-2-1927).[Andhra Pradesh].-Same as that of Madras.[Assam].-Same as that of Calcutta.[Bombay].-For the existing rule 9 and its marginal notes, substitute, the following as rule 9 and marginal note:"9. Chief Ministerial Officer to sign lists and copies produced alongwith plaint.-(1) The plaintiff shall endorse on the plaint or annex thereto a list of documents (if any) which he has produced along with it.(2) The Chief Ministerial Officer of the Court shall sign such lists and the copies of the plaint with annexures presented under rule 1 of Order IV, if on examination he finds them to be correct."-(1-10-1983).[Calcutta].-For rule 9(1), substitute:"9.(1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it.(1A) The plaintiff shall present with his plaint:(i) As many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements;(ii) Draft forms of summons and fees or service thereof."-(3-2-1933).[Karnataka].-Delete rule 9 and substitute the following:"9. The plaintiff shall present alongwith the plaint as many copies on plain paper of the plaint as there are defendants, unless by reason of the length of the plaint or the number of the defendants or for any other sufficient reason, the Court permits him to present a like number of concise statements of the nature of the claim made or of the relief claimed in the suit, in which case he shall present such statements. Where the plaintiff sues or the defendant or any of the defendants is sued in a

representative capacity, such statements shall show in what capacity the plaintiff or the defendant sues or is sued. The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint. The copies or concise statements, as the case may be, shall bear an endorsement signed by the party or the pleader filing the same as to the effect that they are true and correct."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In Order 7, rule 9,(i) for sub-rule (1) the following sub-rule shall be substituted, namely:"9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it, and shall present along with the plaint as many copies on plain paper of the plaint as there are defendants."(ii) sub-rules (2) and (3) shall be omitted.(iii) in sub-rule (4) the words "or statements" shall be omitted.-(9-6-1959).[Madhya Pradesh].-Substitute the following for rule 9:"9. (1) The plaintiff shall endorse on the plaint or annex thereto, a list of the documents (if any) which he has produced along with it.(2) The Chief Ministerial Officer of the Court shall sign such lists and the copies of the plaint presented under rule 1 of Order 4, if on examination, he finds them to be correct. "-(16-9-1960).[Madras].-In rule 9(1) of Order 7, after the word "and" occurring in the third line, delete the comma and the five words following, viz., "if the plaint is admitted" and insert the expression "along with the plaint" after the words "shall present".[Punjab, Haryana and Chandigarh].-For sub-rule (1-A) substitute the following:-"The plaintiff shall, within the time fixed by the Court or extended by it under sub-rule (1), file summons in the prescribed form, in duplicate, after being duly filled in, for each of the defendants and pay the requisite fee for the service thereof on the defendants."-Punjab (26-2-1982) Haryana (16-2-1982) and Chandigarh (1-4-1982).[N.B.-These High Court Amendments relate to the provisions as existed before the 2002 Amendment Act.]

## **10. [ Return of plaint. [This rule has been applied to suits for the recovery of rent under the Chota Nagpur Tenancy Act, 1908 (Ben. 6 of 1908) Section 265.]-**

(1)[Subject to the provisions of rule 10A, the plaint shall] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977)] at any state of the suit be returned to be presented to the Court in which the suit should have been instituted.[Explanation.-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)Procedure on returning plaint.-On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

High Court Amendment-[Bombay].-In Order VII, rule 10, for the existing sub-rule (1) and its marginal note, substitute the following as sub-rule (1) and marginal note:"10. Return of plaint.-(1) Subject to the provisions of rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The plaintiff or his pleader shall be informed of the date fixed for the return of the plaint. "-(1-10-1983).



**10A. [ Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

(1)Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing, so, intimate its decision to the plaintiff.(2)Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-(a)specifying the Court in which he proposes to present the plaint after its return,(b)praying that the Court may fix a date for the appearance of the parties in the said Court, and(c)requesting that the notice of the date so fixed may be given to him and to the defendant.(3)Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-(a)fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and(b)give to the plaintiff and to the defendant notice of such date for appearance.(4)Where the notice of the date for appearance is given under sub-rule (3),-(a)it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded otherwise directs, and(b)the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.(5)Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

**10B. Power of appellate Court to transfer suit to the proper Court. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

(1)Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the Court in which the suit should have been instituted,(whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.(2)The direction made by the Court under sub-rule (1), shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.]

**11. Rejection of plaint. -**

The plaint shall be rejected in the following cases:-(a)where it does not disclose a cause of action;(b)where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;(c)where the relief

claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law : (e) [where it is not filed in duplicate;] [Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 17 (w.e.f. 1.7.2002).] (f) [where the plaintiff fails to comply with the provisions of rule 9:] [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 8, for sub-Clauses (f) and (g) (w.e.f. 1.7.2002) (as inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 17 (w.e.f. 1.7.2002).] [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.] [Added by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Assam].-Same as that of Calcutta.[Calcutta].-Add the following as clause (e): "(e) Where any of the provisions of rule 9 (1-A) is not complied with and the plaintiff on being required by the Court to comply therewith within a time to be fixed by the Court, fails to do so."-(25-7-1928).[Karnataka].-Delete rule 11(c) and substitute the following: "11(c) Where the relief claimed is properly valued, but the Court-fee actually paid is insufficient and the plaintiff does not make good the deficiency within the time, if any, granted by the Court."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madras].-For clause (c), the following clause shall be substituted, namely: "Where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court"-(9-2-1967).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999/2002 Amendment Acts.]

## **12. Procedure on rejecting plaint. -**

Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

## **13. Where rejection of plaint does not preclude presentation of fresh plaint. -**

The rejection of the plaint on any of the grounds herein before mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

High Court Amendment-[Bombay].-In Order VII, for the existing rule 13 and its marginal note, substitute the following as rule 13 and marginal note: "13. Where rejection of plaint does not preclude presentation of fresh plaint.-The rejection of the plaint on any of the grounds hereinbefore mentioned or on the ground mentioned in rule 14-A (5)(a) of Order VI shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."-(1-10-1983).

### **Documents Relied On In Plaint**

**14. [ Production of document on which plaintiff sues. [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 17, for rule 14 (w.e.f. 1.7.2002).]-**

(1)Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.(2)Where any such document is not in the possession or power of the plaintiff, he shall, where possible, state in whose possession or power it is.](3)[ A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.] [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 8, for sub-rule (3)(1.7.2002).](4)[ Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 17, for rule 14 (w.e.f. 1.7.2002).]

High Court Amendment-[Karnataka].-Delete rule 14 and substitute the following:-"14. (1) The plaintiff shall endorse on the plaint or annex thereto a list of documents required to be produced or disclosed as hereinafter provided in this rule.(2) Where the plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.(3) Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in the list above referred to showing separately which of the documents are in his possession or power and which are not, which of the documents in his possession or power he has produced with the plaint and which are not so produced. In regard to any such documents which are not produced, the list shall contain a statement of the reason for their non-production and the steps which the plaintiff has taken or will take to produce them or cause their production."-(R.O.C. No. 2526/1959, dated 9-2-1967).[N.B.-This High Court Amendment relates to the provisions as existed before the 1999 Amendment Act.]

**15. Statement in case of documents not in plaintiff's possession or power. -**

[Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), section 17 (w.e.f. 1.7.2002).]

**16. Suits on lost negotiable instruments. -**

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

## 17. Production of shop-book. -

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in shop-book or other account in his possession or power the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies. (2) Original entry to be marked and returned.-The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

High Court Amendments-[Allahabad].-Add the following proviso at the end of clause (2) of rule 17: "Provided that, if the copy is not written in English or is written in a character other than the ordinary Persian or Nagri character in use, the procedure laid down in Order 13, rule 12 as to verification shall be followed, and in that case the Court or its officer need not examine or compare the copy with the original."-(29-1-1927 and 10-12-1932). [Bombay].-Substitute a colon for the full stop at the end of sub-rule (2) and add thereafter the following provisos: "Provided that where the entry referred to in this rule is in a language other than English or the language of the Court, the plaintiff shall file with the plaint a true copy of the entry together with its translation either in English or in the language of the Court, such translation being verified as regards its correctness by an affidavit of the person making the translation: Provided further that the Court may accept a plaint without the translation and permit the party to file the said translation within a time to be fixed by the Court. In either of such cases the Court or its officer need not examine and compare the copy with the original and certify the same to be correct."-(1-10-1983). [Delhi].-Same as that of Punjab. [Gujarat].-The following proviso shall be added at the end of sub-rule (2) of rule 17: "Provided that where the entry referred to in this rule is in a language other than the language of the Court, the plaintiff shall file with the plaint a true copy of the entry together with its translation in the language of the Court such translation being verified as regards its correctness by an affidavit of the person making the translation. In such a case the Court or its officer need not examine and compare the copy with the original and certify the same to be correct."-(17-8-1961). [Himachal Pradesh].-Same as that of Punjab. [Karnataka].-Add the following as sub-rule (3) to rule 17: "(3) Where the document is not in the language of the Court. the Chief Ministerial Officer of the Court shall take the directions of the Judge or Presiding Officer of the Court as to whether the procedure prescribed in rule 12 of Order XIII of this Code shall be followed."-(R.O.C. No. 2526/1959, dated 9-2-1967). [Punjab, Haryana and Chandigarh].-Add the following after sub-rule (2): "Explanation.-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 of the original entry, and no examination or comparison by the ministerial officer shall be required except by a special order of the Court." High Court Amendments-Rules 19 to 25-[Allahabad].-Add the following rules to Order 7: "19. Every plaint or original petition shall be accompanied by a proceeding giving an address written in Hindi in Devnagri script at which service of notice, summons or other process may be made on the plaintiff

or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature.<sup>20</sup> An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resided, if within the limits of the United Provinces of Agra and Oudh.<sup>21</sup> Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court sue motu or any party may apply for an order to that effect and the Court may make such order as it thinks just.<sup>22</sup> Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed, such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served.<sup>23</sup> Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Order 3, rule 5, unless the Court directs service at the address for service given by the party.<sup>24</sup> A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.<sup>25</sup> Nothing in these rules shall prevent the Court from directing the service of a notice or process in any other manner, if for any reasons, it thinks fit to do so."-(1-6-1918 and 12-12-1970).<sup>26</sup> Deleted by Notification 4084, 35-A-3(7), dated 24-7-1926.

Rules 19 to 26-[Bombay].-In Order VII, after the existing rule 18, add the following rules with marginal notes as new rules 19 to 26 and their respective marginal notes:

19. (1) Address to be filed with plaint or original petition.-Every plaint or original petition shall be accompanied by a memorandum in writing giving an address at which service of notice, or summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a memorandum in writing of this nature.

(2) Registered address.-This address shall be called the "registered address", and it shall, subject to rule 24 of this Order, hold good in all proceedings in the suit and in appeals and also for a further period of six years from the date of the final decision for all purposes including those of execution.

20. Nature of address to be filed.-The registered address filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed or, if a party cannot conveniently give an address as aforesaid, at a place where the party ordinarily resides.

21. (1) Consequences of failure to file address.-Where a plaintiff or petitioner, after being required to file the registered address within a specified time, fails to file the registered address, he shall be liable to have his plaint or petition rejected by the Court suo mote, or any party may apply for an order to that effect and the Court may make such order as it thinks just.

(2) When default may be condoned.-Where a plaint or a petition is rejected under sub-rule (1) the plaintiff or the petitioner may apply for an order to set aside the rejection and, if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing a registered address at the proper time, the Court shall set aside the rejection on such terms as to costs or otherwise as it deems fit and shall appoint a date for proceeding with the suit or petition.

22. Procedure when party not found at the place of registered address.-Where a party is not found at the registered address and no agent or adult male member of his family, on whom a notice or process can be served is present, a copy of the notice or

process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgment, (which payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.<sup>23</sup> Service of process where party engages pleader.-Where a party engages a pleader, notice or process issued against the party shall be served in the manner prescribed by Order 3, rule 5, unless the Court directs service at the registered address of the party.<sup>24</sup> Change of registered address.-A party who desires to change the registered address given by him as aforesaid shall file a fresh memorandum in writing to this effect, and the Court may direct the amendment of the record accordingly. Notice of such memorandum shall be given to such other parties as the Court may deem it necessary to inform, and may be served either upon the pleaders or such parties or be sent to them by registered post pre-paid for acknowledgment as the Court thinks fit.<sup>25</sup> Rules not binding on Court.-Nothing in rules 19, 22, 23 and 24 of this Order shall prevent the Court from directing the service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so.<sup>26</sup> Applicability to notice under Order 21, Rule 22.-Nothing in rules 19, 22, 23 and 24 of this Order shall apply to the notice prescribed by clause (b) of sub-rule (1) of rule 22 of Order 21 of this Code."-(1-11-1966).[Delhi].-Same as that of Punjab.Rules 19 to 25-[Gujarat].-Rule 19 be added:"19. Address to be filed with plaint or original petition.-Every plaint or original petition shall be accompanied by a memorandum in writing giving an address at which service of notice, or summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall immediately on being so added, file a memorandum in writing of this nature. The address so given shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of the final decision and for all purposes including those of execution."Rule 20 be added:"20. Nature of address to be filed.-An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or if he cannot conveniently give an address as aforesaid, at the place where a party ordinarily resides."Rule 21 be added:"21. Consequences of failure to file address.-Where a plaintiff or petitioner fails to file an address for service he shall be liable to have his suit dismissed or his petition rejected by the Court suo motu, or any party may apply for an order to that effect, and the Court may make such order as it thinks just."Rule 22 be added:"22. Procedure when party is not found at the place of address.-Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the address supplied by that party by registered post pre-paid for acknowledgment (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served."Rule 23 be added:"23. Service of notice on pleaders.-Where a party engages a pleader, notice or process on him shall be served in the manner prescribed by Order 3, rule 5 unless the Court directs service at the address for service given by the party."Rule 24 be added:"24. Change of the registered address.-A party who desires to change the address for service given by him as aforesaid shall file a fresh memorandum in writing to this effect and the Court may direct the amendment of the record accordingly: Notice of such memorandum

shall be given to such other parties to the suit as Court may deem it necessary to inform and may be served either upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit."Rule 25 be added:"25. Service of notice or process in any other manner.-Nothing in these rules shall prevent the Court from directing the service of a notice or process in any other manner, if for any reasons, it thinks fit to do so."Rule 26 be added:"26. Applicability to notice under Order 21, rule 22.-Nothing in these rules shall apply to the notice prescribed by Order 21, rule 22."-(17-18-1961).Rules 19 to 25-[Himachal Pradesh].-Same as those of Punjab except in rule 20 the words "Judicial Commissioner's Court, Himachal Pradesh" are substituted for the words "High Court of Judicature at Lahore."Rules 19 to 23-[Madhya Pradesh].-Add the following as rules 19 to 23:"19. Registered address.-Every plaint or original petition shall be accompanied by a memorandum giving an address at which service of process may be made on the plaintiff or petitioner. The address shall be within the local limits of the Civil District in which the plaint or original petition is filed or, if an address within such Civil District cannot conveniently be given, within the local limits of the Civil District in which the party ordinarily resides.This address shall be called the "registered address" and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.20. Registered address by a party subsequently added as plaintiff or petitioner.-Any party subsequently added as plaintiff or petitioner shall in like manner file a registered address at the time of applying or consenting to be joined as plaintiff or petitioner.21. Consequences of non filing of registered address.-(1) If the plaintiff or the petitioner fails to file a registered address as required by rule 19 or 20, he shall be liable, at the discretion of the Court, to have his suit dismissed or his petition rejected.An order under this rule may be passed by the Court suo motu or on application of any party.(2) Where a suit is dismissed or a petition rejected under sub-rule (1) the plaintiff or the petitioner may apply for an order to set the dismissal or rejection aside and if he files a registered, address and satisfies the Court that he was prevented by any sufficient cause from filing the registered address at the proper time the Court shall set aside the dismissal or the rejection upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or petition.22. Affixing of process and its validity.-Where the plaintiff or the petitioner is not found at his registered address, and no agent or adult male member of his family on whom a process can be served is present, a copy of the process shall be affixed to the outer door of the house and such service shall be deemed to be as effectual as if the process had been personally served.23. Change of registered address.-A plaintiff or petitioner who wishes to change his registered address shall file a verified petition and the Court shall direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit or proceedings as the Court may deem it necessary to inform."-(16-9-1960).Order 7-[Orissa].-Same as those of Patna amendment except rules 19, 20, 21 and 22 of Order 7 (Patna Amendment) (7-5-1954).Rules 19 to 22-[Patna].-Add the following rules:"19. Every plaint or original petition shall be accompanied by a statement giving an address at which service of notice, summons or other process may be made on the plaintiff, or petitioner, and every plaintiff or petitioner subsequently added shall, immediately on being so added, file a similar statement.20. An address for service filed under the preceding rule shall state the following particulars(1) the name of the street and number of the house (if in a town);(2) the name of the town or village;(3) the post office;(4) the district; and(5) the munsiff (if in Bihar) or the district Court (if outside Bihar).21. Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit

dismissed or his petition rejected by the Court suo motu or any party may apply for an order to that effect and the Court may make such order as it thinks fit.<sup>22</sup> A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post as the Court thinks fit."Rules 19 to 25-[Punjab].-Add the following rules:"19. Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature.<sup>20</sup> An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides, if within the limits of the territorial jurisdiction of the High Court of judicature at Lahore.<sup>21</sup> Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court suo motu or any party may apply for an order to that effect and the Court may make such order as it thinks just.<sup>22</sup> Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present, a copy of the notice, summons or other process shall be fixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice, summons or other process had been personally served.<sup>23</sup> Where a party engages a pleader, notices, summonses or other processes for service on him shall be served in the manner prescribed by Order 3, rule 5, unless the Court directs services at the address for service given by the party.<sup>24</sup> A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.<sup>25</sup> Nothing in these rules shall prevent the Court from directing the service of a notice, summons or other process in any other manner, if for any reasons, it thinks fit to do so."Rules 19 to 25--[Rajasthan].-Add the following as rules 19 to 25:"19. (1) Every plaint or original petition shall be accompanied by a memorandum giving an address at which service of process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a memorandum of this nature.(2) This address shall be called the registered address and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.<sup>20</sup> An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides, if within the limits of Rajasthan.<sup>21</sup> (1) Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court suo motu or any party may apply for an order to that effect, and the Court may make such order as it thinks just.(2) Where a suit is dismissed or a petition rejected under sub-rule (1) the plaintiff or the petitioner may apply for an order to set the dismissal or the rejection aside and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing



the registered address at the proper time, the Court shall set aside the dismissal or the rejection upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or petition.<sup>22</sup> Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a process can be served, is present, a copy of the process shall be affixed to the outer door of the house. If on the date fixed, such party is not present and the process is not declared by the Court under rule 19 of Order 5, to have been duly served, another date shall be fixed and a copy of the process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the process had been personally served.<sup>23</sup> Where a party engages a pleader, process for service on him shall be served in the manner prescribed by Order 3, rule 5, unless the Court directs service at the address for service given by the party.<sup>24</sup> A party who desires to change the address for service given by him as aforesaid, shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.<sup>25</sup> Nothing in these rules shall prevent the Court from directing the service of a process in any other manner, if for any reasons it thinks fit to do so."-(24-7-1954).

## **18. Inadmissibility of document not produced when plaint filed. -**

[Omitted by the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002), section 8 (w.e.f. 1.7.2002).]

## **ORDER – VIII**

**WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM**[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for the former heading (w.e.f. 1.2.1977).]

High Court Amendment-Order 8, title-[Bombay].-For the existing title of Order VIII, substitute the following title:"Written Statement, Set-off, Counter-claim, and Third Party Procedure."-(1-10-1983).

### **1. Written statement. -**

(1)[Rule 1 renumbered as sub.rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

High Court Amendments-[Allahabad].-Omit the full stop at the end and add the following at the end:"and shall file with his written statement a list of documents (whether in his possession or power or not) on which he relies as evidence in support of his defence."-(17-1-1953).[Bombay].-For the existing rule 1 and its marginal note, substitute the following as rule 1 and marginal note:"1. Written statement.-The defendant may, and if so required by the Court, shall within such time as may be specified in this behalf or within such extended time as the Court may permit, present a written statement of his defence after serving a copy thereof on the plaintiff or his pleader on or before the date fixed for presenting the same in Court, or file in Court for the use of the plaintiff a copy of the written statement while presenting the same in Court:Provided that the first adjournment for filing the written statement shall not ordinarily exceed four weeks and no further adjournment shall be granted except for reasons to be recorded in writing."-(1-10-1983).[Patna].-For rule 1 substitute the following:"1. (1) The defendant may, and if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence, and with such written statement, or if there is no written statement, at the first hearing shall produce in Court all documents in his possession or power on which he bases his defence or any claim for set-off.(2) Where he relies on any other documents as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement, or where there is no written statement, to be presented at the first hearing. If no such list is so annexed or presented the defendant shall be allowed a further period of ten days to file this list of documents.(3) A document which ought to be entered in the list referred to in sub-clause (2) but which has not been so entered, shall not, without the leave of the Court, be received in evidence on the defendant's behalf at the hearing of the suit.(4) Nothing in this rule shall apply to documents produced for cross-examination of plaintiff's witnesses or handed to a witness merely to refresh his memory."-(9-8-1972).[N.B.-These High Court Amendments relate to the provisions as existed before the 2002 Amendment Act.]

[1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-[Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 18 (w.e.f. 1.7.2002).](1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.(2)Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.](3)[ A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.] [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 9, for sub-rule (3)(w.e.f. 1.7.2002).](4)[ Nothing in this rule shall apply to documents(a)produced for the cross-examination of the plaintiff's witnesses, or(b)handed over to a witness merely to refresh his memory.]

## 2. New facts must be specially pleaded. -

The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not

arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

### **3. Denial to be specific. -**

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

### **3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court—**

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule. (2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits. (3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version. (4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction. (5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit. [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015)]

### **4. Evasive denial. -**

Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance, Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

### **5. Specific denial. -**

(1) [Rule 5 renumbered as sub.rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability : Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission: Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability. [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).] (2) [Where the defendant has not filed a pleading, it shall be lawful for the Court to

pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.(3)In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.(4)Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1.2.1977).]

## 6. Particulars of set-off to be given in written statement. -

(1)Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.(2)Effect of set-off.-The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off : but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.(3)The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.Illustrations(a)A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effect, C pays Rs. 1,000 as surety for D: then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of Rs. 1,000.(b)A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.(c)A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.(d)A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite, pecuniary demands may be set-off.(e)A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.(f)A and B sue C for Rs. 1,000 C cannot set-off a debt due to him by A alone.(g)A sues B and C for Rs. 1000. B cannot set-off a debt due to him alone by A.(h)A owes the partnership firm of B and C Rs. 1,000 B dies, leaving C surviving. A sues C for a debt of Rs.1,500 due in his separate character. C may set-off the debt of Rs. 1,000.[Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 18 (w.e.f. 1.7.2002).]

High Court Amendments-[Karnataka].-Same as that of Patna-(R.O.C. No. 2526/ 1959, dated 9-2-1967).[Patna].-Add the following to sub-rule (1):"and the provisions of Order 7, rules 14 to 18 shall mutatis mutandis apply to a defendant claiming set off as if he were a plaintiff."

**6A. [ Counter-claim by defendant. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

(1)A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. whether such counter-claim is in the nature of a claim for damages or not :Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.(2)Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.(3)The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.(4)The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

**6B. Counter-claim to be stated. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

**6C. Exclusion of counter-claim. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

**6D. Effect of discontinuance of suit. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

**6E. Default of plaintiff to reply to counter-claim. -**

If the plaintiff makes default in putting in reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him or make such order in relation to the counter-claim as it thinks fit.[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

**6F. Relief to defendant where counter-claim succeeds. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

Where in any suit a set-off or counter-claim is established as defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

**6G. Rules relating to written statement to apply. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.]

**7. Defence or set-off founded upon separate grounds. -**

Where the defendant relies upon several distinct grounds of defence or set-off [or counter-claim] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] founded separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

Order 8, Rule 7-A High Court Amendment-[Karnataka].-After rule 7 and before rule 8 add the following as rule 7-A: "7-A. Where the defendant seeks the permission of the Court under rule 8 of Order I of this Code to defend the suit on behalf of or for the benefit of himself and other persons having the same interest as the defendant in the subject-matter of the suit he shall file an application supported by an affidavit setting out the particulars detailed in sub-rule (2) of rule 4 of Order VII of this Code. Notice of such an application shall be given to all parties to the suit, and if the permission sought is granted the plaint may be amended by inserting a statement that the defendant is with the leave of the Court sued as the representative of all persons interested in subject-matter of the suit."-(R.O.C. No. 2526/1959, dated 9-2-1967).

**8. New ground of defence. -**

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off [or counter-claim] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] may be raised by the defendant or plaintiff as the case may be, in his written statement.

**8A. Duty of defendant to produce documents upon which relief is claimed by him.-**

[Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), section 18 (w.e.f. 1.7.2002).]

**9. [ Subsequent pleadings. [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 9, for rule 9 (w.e.f. 1.7.2002).]-**

No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.]

**10. [ Procedure when party fails to present written statement called for by Court. [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 9, for rule 10 (w.e.f. 1.7.2002).]-**

Where any party from whom a written statement is required under rule 1 or 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up.] Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement. [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).]

High Court Amendments-Rules 11 and 12-[Allahabad].-Add the following rules to Order 8:11. Every party, whether original, added or substituted, who appears in any suit or other proceeding shall, on or before the date fixed in the summons or notice served on him as the date of hearing, file in a Court a proceeding stating his address for service, written in Hindi in Devanagri script, and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks just.12. Rules 20, 22, 23, 24 and 25 of Order 7 shall apply, so far as may be, to addresses for service filed under the preceding rule."-(1-6-1918). Rules 11 to 30-[Bombay].-In Order 8, after the existing rule 10, add the following rules with marginal notes and topical headings as new rules 11 to 30 and their respective marginal notes and topical headings:11. (1)(a) Parties to file addresses.-Every party, whether original, added or substituted, who appears in any suit or other proceeding, shall file in the Court on or before the date fixed in the summons or notice served on him as the date for his appearance or within such further time as may be allowed by the Court, a memorandum in writing stating the address at which he may be served.(b) Registered address.-This address shall be called the "registered address" and it shall, subject to rule 24 of Order 7 read with rule 12 of this Order hold good in all proceedings in the suit and in appeals and also for a further period of six years from the date of the final decision for all purposes including those of execution.(c) Consequences of default in filing registered address.-If, after being required to file the registered address within a specified time, he fails to do so, he shall be liable to have his defences, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks fit.(2) When default may be condoned.-Where the Court has struck out the defences under

sub-rule (1) and has adjourned the hearing of the suit or the proceeding and where the defendant or the opposite party at or before such hearing appears and assigns sufficient cause for his failure to file the registered address and also files the registered address, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit or the proceeding as if the defences had not been struck out.(3) When decree passed on default can be set aside.-Where the Court has struck out the defences under sub-rule (1) and has consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order to set aside the decree or order, and, if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address the Court shall make an order setting aside the decree or order as against him upon terms as to costs or otherwise as it thinks fit and shall appoint a date for proceeding with the suit or proceeding: Provided that where the decree or order is of such a nature that it cannot be set aside as against such defendant or opposite party only, it may be set aside as against all or any of the other defendants or the opposite parties.12. Applicability of rules 20 and 22 to 26 of Order 7.-Rules 20, 22, 23, 24, 25 and 26 of Order 7 shall apply so far as they may be applicable, to registered addresses filed under the last preceding rule.**Counter-claim**13. Defendant may set up counter-claim against the claims of the plaintiff in addition to set off.A defendant in a suit, in addition to his right of pleading a set-off under Order 8, rule 6 of the Code of Civil Procedure, 1908, may set up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to the defendant either before or after the filing of the suit, but before the defendant has delivered his defence and before the time limited for delivering his defence has expired, whether such counter-claim sounds in damages or not, and such a counter-claim shall have the same effect as a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original and on the counter-claim and the plaintiff (if so advised) shall be at liberty to file a written statement in answer to the counter-claim of the defendant within four weeks after service upon him or his pleader of a copy of the defendant's counter-claim; and the Court or a Judge may, on the application of the plaintiff before trial if in the opinion of the Court or Judge such counter-claim cannot be disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit in respect thereof.14. Defendant setting up a counter-claim to specifically state so in the written statement.-Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall in his written statement state specifically that he does so by way of counter-claim.15. Where the counter-claim involves in addition to the plaintiff other persons also, the defendant to add further title to the title of the written statement and deliver copies of his written statement to such persons as are already parties to the suit.-Where a defendant by a written statement sets up any counter-claim, which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his written statement a further title similar to the title in a plaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by a cross-suit, would be defendants to such cross-suit, and shall deliver copies of his written statement to such of them as are already parties to the suit within the period within which he is required to deliver it to the plaintiff.16. Service of summons when counter-claim is against persons who are not already parties to the suit.-Where any such person as is mentioned in the last preceding rule, is not already a party to the suit, he shall be summoned to appear by being served with a copy of the written statement and such service shall be regulated by the same rules as are contained in the Code



of Civil Procedure, 1908, with respect to the service of a writ of summons.<sup>17</sup> Appearance of persons other than defendants to the suit, when served with counter-claim.-Any person not a defendant to the suit, who is served with a written statement and counter-claim as aforesaid, must appear therein as if he had been served with a writ of summons to appear in the suit.<sup>18</sup> Reply to counter-claim.-Any person named in a written statement as a party to a counter-claim thereby made, may deliver a reply within the time, within which he might deliver a written statement if it were a plaint.<sup>19</sup> Objection to counter-claim being allowed to be set up in the suit.-Where a defendant sets up a counter-claim, if the plaintiff or any other person named in the manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, he may, at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded and the Court or Judge may, on the hearing of such application, make such order as shall be just.<sup>20</sup> Counter-claim may be proceeded with, even if suit be stayed, discontinued or dismissed.-If in any case in which the defendant sets up a counter-claim the suit of the plaintiff is stayed, discontinued or dismissed the counter-claim may nevertheless be proceeded with.<sup>21</sup> On default of reply to counter-claim, the counter-claim may be set down for judgment.-If the defendant to the counter-claim makes default in putting in reply to the counter-claim, the defendant in the suit who is the plaintiff to the counter-claim, may, in such cases, get the suit set down for judgment on the counter-claim, and such judgment shall be given as the Court shall consider him to be entitled to.<sup>22</sup> Judgment when set-off or counter-claim is established.-Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled upon the merits of the case.-(1-11-1966). **Third Party Procedure**<sup>23</sup>. Third Party Notice.-Where in a suit a defendant claims against any person not already a party to the suit (hereinafter called the Third Party)(a) that he is entitled to contribution or indemnity, or(b) that he is entitled to any relief or remedy relating to or connected with the subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff, or(c) that any question or issue relating to or connected with the subject-matter of the suit is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the Third Party or between any or either of them, he may apply to the Court for leave to issue a notice (hereinafter called the "Third Party Notice") to that effect. The application shall be made by affidavit, stating the nature of the claim made by the defendant and the facts on which proposed. Third Party Notice is based and may be made ex parte. The application shall be made within four weeks from the service of the summons upon defendant.<sup>24</sup> Form and Service of Notice.-(1) Third Party Notice shall state the nature of the claim made by the plaintiff against the defendant and the nature and grounds of the claim made by the defendant against the Third Party or the nature and extent of any relief or remedy claimed by him against Third Party or the nature of the question or issue sought to be determined and shall be sealed with the seal of the Court. It shall be served on the Third Party according to the rules relating to service of summons and shall, unless otherwise ordered, be served within two weeks from the date of the order granting leave to issue the Third Party Notice. A copy of the plaint and copy of the affidavit of the defendant in support of the Third Party Notice shall be served on the Third Party along with the Third Party Notice.(2) A copy of the Third Party Notice and of the affidavit of the

defendant in support of the Third Party Notice shall be furnished to all parties to the suit within two weeks from the date of the order granting leave to issue the Third Party Notice.<sup>25</sup> Effect of Service of Notice.-The Third Party shall, as from the time of the service upon him of the Notice, be a party to the suit with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.<sup>26</sup> Third Party to enter Appearance or Vakalatnama.-If the Third Party desires to dispute the plaintiff's claim in the suit as against the defendant on whose behalf the Notice has been issued or his own liability to the defendant, the Third Party shall enter an appearance in person or a Vakalatnama in the suit within two weeks from the service of the Notice: Provided that a person so served and failing to appear within the said period of two weeks may apply to the Court for leave to appear and such leave may be given on such terms, if any, as the Court may think fit.<sup>27</sup> Consequence of failure to enter Appearance or Vakalatnama.-If the Third Party does not enter an appearance in person or a Vakalatnama he shall be deemed to admit the claim stated in the Third Party Notice and shall be bound by any judgment or decision in the suit, whether by consent or otherwise, in so far as it is relevant to any claim, question or issue stated in the Notice.<sup>28</sup> Decree when Third Party makes default in Appearance or Vakalatnama.-Where the Third Party makes default in entering an appearance in person or a Vakalatnama in the suit, (1) in cases where the suit is tried and results in favour of the plaintiff, the Court which tries the suit may, at or after the trial, pass such decree in favour of the defendant against the Third Party as the nature of the case may require: Provided that, execution thereof shall not issue without the leave of the Court until the decree against the defendant has been satisfied, and (2) in cases where the suit is decided in plaintiff's favour, otherwise than by trial, the Court may, at any time after the decree against the defendant has been satisfied, on the application of the defendant pass such decree in favour of the defendant against the Third Party as the nature of the case may require.<sup>29</sup> Third Party to file Affidavit in Reply.-If the Third Party enters an appearance in person or a Vakalatnama he shall file within two weeks thereafter an affidavit in reply to the affidavit of the defendant in support of the Third Party Notice, setting out his case in respect of the Third Party Notice, and his case, if any, in respect of the plaint.<sup>30</sup> Appearance or Vakalatnama of Third Party Directions to be given.-(1) Where the Third Party enters an appearance in person or a Vakalatnama and files his affidavit as required by the last preceding rule, and the suit appears on Board for directions before the Court it may, (a) order any claim, question or issue stated in the Third Party Notice to be tried in such manner, before, at or after the trial of the suit, as the Court may think fit and may, in that event, give the Third Party leave to defend the suit either along or jointly with any defendant, upon such terms as he may think just, or to appear at the trial and take such part therein as he may think just and generally may make such orders and give such directions as may appear proper for having the questions and the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the Third Party shall be bound or made liable by any decree in the suit, or (b) dismiss the Third Party Notice. (2) Any order made or direction given under this rule may be varied or rescinded by the Court any time before the disposal of the suit.<sup>31</sup> Defendant to apply for directions in certain cases.-Where for any reason it is not possible for the Court to give direction on the Third Party Notice at the time when the suit appears on the Board for directions, the defendant issuing the Third Party Notice shall, within two weeks, after the filing of the affidavit in reply by the Third Party apply for directions. Upon the hearing of such applications, the Court may pass such orders and give such directions as are mentioned in the last preceding rule.<sup>32</sup> Costs.-The Court may

decide all questions of costs as between a Third Party and the other parties to the suit, and may order any one or more to pay the costs of any other, or others or give such directions to costs as the justice of the case may require.<sup>33</sup> Setting aside third party proceedings.-Proceedings on a Third Party Notice may, at any stage of the proceedings, be set aside by the Court.<sup>34</sup> Right of the third party and of each successive third party to apply for third party notice against other persons.-(1) Where the Third Party makes against any person not already a party to the suit (to be called "the second third party") such a claim as is mentioned in rule 23, he may by leave of the Court issue a Third Party Notice to that effect.(2) Where the second "Third Party" in his turn makes such a claim as is mentioned in rule 23 against any person not already a party to the suit (to be called "the Third Party") or where each successive Third Party in his turn makes such a claim against any person not already a Party to the suit, such second "Third Party" or any successive Third Party may, by leave of the Court issue a Third Party Notice to that effect.(3) The provisions contained in the preceding rules as to Third Party Procedure shall, with any necessary modification apply to all cases where Third Party Notices have been issued, whether at the instance of the Third Party or any successive Third Party.<sup>35</sup> Right of defendant to issue third party notice against co-defendant.-(1) Where a defendant makes against a co-defendant such a claim as is mentioned in rule 23 he may, without leave of the Court, issue and serve on such co-defendant within six weeks from the service of the summons upon him (the defendant making the claim) a notice stating the nature and g!bund of such claim and shall at the same time file an affidavit in support of such claim and furnish copies thereof to all parties in the suit.(2) The provisions contained in the preceding rules regarding Third Party Procedure shall, with necessary modifications, apply to cases where a defendant has issued such notice against a co-defendant, but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the suit.<sup>36</sup> Third Party proceedings in a counter-claim.-Where in any suit a counter-claim is made by a defendant, the provisions contained in the preceding rules regarding Third Party Procedure shall, with any necessary modifications, apply in relation to the counter-claim as if the subject-matter of the counter-claim were the subject-matter of the suit, and as if the person making the counter-claim were the plaintiff and the person against whom it is made a defendant."-(31-12-1987).[Delhi].-Same as that of Punjab.Rules 11 and 12-[Gujarat].-Add the following as rule 11:"11. Parties to file addresses.-Every party, whether original, added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in Court a memorandum in writing stating his address for service, and if he fails to do so, he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks fit. The address so given shall hold good throughout the interlocutory proceedings and appeals and also for a further period of two years from the date of the final decision and for all purposes including those of execution:Provided that this rule shall not apply to a defendant who has not filed a written statement but who is examined by the Court under section 7 of the Dekkhan Agriculturists' Relief Act, 1879, or otherwise or in any case where the Court permits the address for service to be given by a party on a date later than that specified in this rule."Rule 12 be added:"Applicability of rules 20 and 22, 24 and 25 of Order 7 to addresses for service.-Rules 20,22,24 and 25 of Order VII shall apply so far as may be, to addresses for service filed under rule 11."-(17-8-1961).Rules 11 and 12-[Himachal Pradesh].-Same as that of Punjab.Rules 11 to 13-[Madhya Pradesh].-Add the following as rules 11 to 13:"11. Registered address.-Every defendant

in a suit on opposite party in any proceedings shall, on the first day of his appearance in Court, file a memorandum giving an address for service on him of any subsequent process. The address shall be within the local limits of the Civil District in which the suit or petition is fixed or, if an address within the limits of such Civil District cannot conveniently be given, within the local limits of the Civil District in which the party ordinarily resides. This address shall be called the "registered address" and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.<sup>12</sup> Consequence of non filing of registered address.-(1) If the defendant or the opposite party fails to file a registered address as required by rule 11, he shall be liable, at the discretion of the Court to have his defence struck out and to be placed in the same position as if he had made no defence. An order under this rule may be passed by the Court suo motu or on the application of any party. (2) Where the Court has struck out the defence under sub-rule (1) and has adjourned the hearing of the suit or the proceedings and where the defendant or the opposite party at or before such hearing, appears and assigns sufficient cause for his failure to file the registered address he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit or the proceedings as if the defence had not been struck out. (3) Where the Court has struck out the defence under sub-rule (1) and has, consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order to set aside the decree or order; and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall, make an order setting aside the decree or order as against him upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or proceeding: Provided that where the decree is of such a nature that it cannot be set aside as against such defendant or opposite party only it may be set aside as against all or any of the other defendants or opposite parties."<sup>13</sup> Rules 20, 22 and 23 of Order 7 shall apply, so far as may be, to addresses for service, filed under rule 11."-(16-9-1960). Rules 11 and 12-[Orissa].-Omit rules 11 and 12 of Order 8 (Patna Amendment)-(7-5-1954). Rules 11 and 12-[Patna].-Add the following rules:"11. Every party, whether original, added or substituted, who appears in any suit or other proceedings shall, at the time of entering appearance to the summons, notice or other process served on him, file in Court a statement stating his address for service and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect and the Court may make such order as it thinks just.<sup>12</sup> Rules 20 and 22 of Order 7, shall apply, so far as may be, to addresses for service filed under the preceding rule." Rules 11 and 12-[Punjab].-Add the following rules:"11. Every party, whether original, added or substituted, who appears in any suit or other proceeding shall, on or before the date fixed in the summons, notice or other process served on him as the date of the hearing file in Court a proceeding stating his address for service, and if he fails to do so, he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect and the Court may make such order as it thinks just.<sup>12</sup> Rules 20, 22, 23, 24 and 25 of Order 7, shall apply so far as may be, to addresses for service filed under the preceding rule."-(24-11-1927). Rules 11 and 12-[Rajasthan]. Add the following rules:"11. (1) Every party whether original, added or substituted who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in Court a

memorandum stating his address for service and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks just.(2) Where the Court has struck out the defence under sub-rule (1) and has adjourned the hearing of the suit or the proceeding and where the defendant or the opposite party at or before such hearing, appears and assigns good cause for his failure to file the registered address he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit or the proceeding as if the defence has not been struck out.(3) Where the Court has struck out the defence under sub-rule (1) and has consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order to set aside the decree or order, and if he files a registered address, and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order as against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with suit or proceeding:Provided that where the decree or order is of such a nature that it cannot be set aside as against such defendant or opposite party only it may set aside as against all or any of the other defendants or opposite parties.12. Rules 19(2), 20, 22, 23, 24 and 25 of Order 7, shall apply, so far as may be, to addresses for service filed under the preceding rule."-(24-7-1954).[Andhra Pradesh].-Same as that of Madras.[Karnataka].-After Order VIII and before Order IX insert the following as Order VIIIA:"ORDER VIII-ATHIRD PARTY PROCEDURE1. (1) Where in respect of the claim made against him in the suit, a defendant claims to be entitled to contribution from or indemnity against any person not already a party to the suit (hereinafter called the third party) he may, by leave of Court, issue a notice (hereinafter called the third party notice) to that effect, sealed with the seal of the Court.(2) An application for leave to issue such notice shall be filed along with the written statement of the said defendant and be accompanied by a draft of the notice sought to be issued. The notice shall state the nature and grounds of the claim and when the draft of the same is approved by Court with or without corrections, it shall be served on the third partytogether with a copy of the plaint and a copy of the said defendant's written statement in the manner prescribed for the service of summons.2.(1) If on being served with such notice the third party does not enter appearance on or before the date fixed therein for his appearance, he shall be deemed to admit the validity of the decree that may be passed against the defendant, on whose behalf the notice was issued, whether upon contest or consent or otherwise, and to admit his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice:Provided that a person so served and failing to appear may, at any time before the disposal of the suit, apply to Court for leave to appear and the Court may grant such leave upon such terms, if any, as it may think fit to impose.(2) Where the third party does not enter appearance in the suit and the suit is decreed upon contest or consent or otherwise against the defendant on whose behalf the notice was issued, the Court may in the said decree make such directions as to contribution or indemnity, as the case may be, against the third party and in favour of the said defendant as the circumstances of the case may require:Provided that the execution thereof shall not issue against the third party without the leave of the Court until after satisfaction by such defendant of the decree against him.3. If the third party desires to dispute either the claim made against him in the third party notice or the plaintiff's claim in the suit or both, he shall enter appearance in the suit on or before the date fixed therefor in the notice.4. When the third party enters appearance under rule 3 or upon leave

being granted under the proviso to sub-rule (1) of rule 2, he shall apply to Court for directions as to further proceedings to be taken on the notice setting out his case or pleas in respect of the same. Notice thereof shall be given both to the defendant on whose behalf the third party notice was issued as well as to the plaintiff, fixing an early date for its hearing.

5.(1) On the hearing of such application:(a) if the Court is of the opinion either that the claim made in the third party notice, is prima facie not warranted or that it is not so intimately connected with the plaintiff's claim in the suit as to render its being conveniently tried along with the plaintiff's claim in the suit, or that its trial in the suit will unduly prolong or hamper the trial of the suit, the Court may dismiss the proceedings on the third party notice;(b) if the Court is satisfied that there is a question to be tried as to the liability of the third party to make the contribution or pay the indemnity claimed, in whole or in part, and that it is just and convenient to try the same in the suit itself, the Court may order the question of such liability as between the third party and the defendant giving notice, to be tried in such manner as it may direct, and may by the said order also give liberty to the third party to defend the suit itself upon such terms as may be just.(2) When the Court proceeds under clause (b) of sub-rule (1) it shall also give such directions as may be necessary for the delivery of pleadings, production of documents or the taking of further appropriate proceedings in the suit.(3) If upon trial a decree comes to be passed, either on contest or consent or otherwise against the defendant on whose behalf notice was given, the Court shall in such decree make such direction as to contribution or indemnity, as the case may be, against the third party and in favour of the said defendant as the circumstances of the case may require, and also as to whether execution in respect of such direction against the third party shall or shall not be conditional upon the defendant satisfying the decree against him.(4) The Court, while making such decrees, may decide all questions of costs as between the third party and other parties and may order any one or more to pay the costs of any other or others and give such directions as to costs as the justice of the case may require.

6.(1) Where the Court dismisses the proceedings on a third party notice under clause (a) sub-rule (1) of rule 5, the claim made in the third party notice shall be deemed to have been left undecided, and the defendant on whose behalf notice was issued will be at liberty to take such other independent proceeding in respect thereof as may be open to him, as if no such notice had been issued by him.(2) Where the Court decides to proceed under clause (b) of sub-rule (1) of rule 5, the third party shall, as from the date on which the third party notice was served on him, be a party to the suit and shall have(a) the same rights as respects the claims made against him by or the decree passed against him in favour of the defendant on whose behalf the notice was issued, as if he had been sued in the ordinary way by the said defendant; and(b) where he is given the liberty to defend the suit itself, the same rights as respects his defence in the suit and the decree passed therein as if he had been sued in the ordinary way by the plaintiff in the suit.(3) On the making of an order under clause (b) of sub-rule (1) of rule 5, the cause-title of the suit shall be amended by inserting the name of the third party in the array of defendants, with the addition in brackets after his name the words "Third party on the notice of the defendants served on."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Add after Order 8, the following:-"ORDER VIII-ATHIRD PARTY PROCEDURE1. Third party notice.-Where a defendant claims to be entitled to contribution from or .-indemnity against any person not already a party to the suit (hereinafter called a third party), he may, by leave of the Court, issue a notice (hereinafter called a third party notice) to that effect, sealed with the seal of the Court. The notice shall state the nature and grounds of the claim. Such notice shall be filed into Court with copy of the plaint and

shall be served on the third party according to the rules relating to the service of summons.<sup>2</sup> Effect of notice.-The third party shall, as from the time of the service upon him of the notice, be deemed to be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.<sup>3</sup> Default by third party.-If the third party desires to dispute the plaintiff's claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party may enter appearance in the suit on or before the date fixed for his appearance in the notice. If he does not enter appearance he shall be deemed to admit the validity of the decree that may be obtained against such defendant, whether by consent or otherwise and his own liability to contribute or indemnify as the case may be, to the extent claimed in the third party notice: Provided always that a person so served and failing to appear may apply to the Court for leave to appear, and such leave may be given upon such terms, if any, as the Court shall think fit.<sup>4</sup> Procedure on default.-Where the third party does not enter appearance in the suit and the suit is decreed by consent or otherwise in favour of the plaintiff, the Court may pass such decree as the nature of the case may require against the third party and in favour of the defendant on whose behalf notice was issued: Provided that execution thereof shall not be issued without leave of the Court until after satisfaction by such defendant of the decree against him.<sup>5</sup> Third party directions.-If the third party enters appearance, the defendant on whose behalf notice was issued may apply to the Court for directions and the Court may, if satisfied that there is a question to be tried as to the liability of the third party to make the contribution or pay the indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice to be tried in such manner, at or after the trial of the suit, as the Court may direct; and, if not so satisfied, may pass such decree or order as the nature of the case may require.<sup>6</sup> Leave to defend.-The Court may, upon the hearing of the application mentioned in rule 5, give the third party liberty to defend the suit upon such terms as may be just, or to appear at the trial and take such part therein as may be just and generally may order such proceedings to be taken, documents to be delivered or amendments to be made, and give such directions as appear proper for the most convenient determination of the question or questions in issue, and as to the mode and extent in or to which the third party shall be bound or made liable by the decree in the suit.<sup>7</sup> Costs.-The Court may decide all questions of costs, as between the third party and the other parties to the suit, and may order anyone or more to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require.<sup>8</sup> Questions between co-defendants.-Where a defendant claims to be entitled to contribution from or indemnity against any other defendant to the suit, a notice may be issued and the same procedure shall be adopted for the determination of such questions between the defendants as would be issued and taken, if such last mentioned defendant were third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the suit.<sup>9</sup> Further parties.-Where any person served with a third party notice by a defendant under these rules claims to be entitled to contribution from or indemnity against any person not already a party to the suit, he may, by leave of the Court, issue a third party notice to that effect and the preceding rules as to the third party procedure, shall apply mutatis mutandis to every notice so issued and the expressions "third party notice" and "third party" in these rules shall apply to and include every notice so issued and every person served with such notice, respectively."-(Act 26 of 1968) (w.e.f. 5-9-1968).

## **ORDER – IX**

### **APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE**

#### **1. Parties to appear on day fixed in summons for defendant to appear and answer. -**

On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

#### **2. [ Dismissal of suit where summons not served in consequence of plaintiffs failure to pay cost.**

[Substituted by the Code of Civil Procedure (Amendment) act, 2002, Section 10, for rule 2 (w.e.f. 1.7.2002).]-Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee of postal charges (if any) chargeable for such service, or failure to present copies of the plaint or concise statements, as required by rule 9 of order VII, the Court may make an order that the suit be dismissed :Provided that no such order shall be made, if, notwithstanding such failure the defendant attends in person (or by agent when he is allowed to appear by agent) on the day fixed for him to appear and answer.]

High Court Amendments-[Allahabad].-In rule 2, after the words, "for such service", insert "or that the plaintiff has failed to comply with the rules for filing the copy of the plaint for service on the defendant".[Orissa].-In rule 2 for the words "Court-fee or postal-charges", substitute the words and comma "Court-fee, postal or other charges".-(7-5-1954).[N.B.-These High Court Amendments relate to the provisions as existed before the 2002 Amendment Act.]

#### **3. Where neither party appears, suit to be dismissed. -**

Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

#### **4. Plaintiff may bring fresh suit or Court may restore suit to file. -**

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for [such failure as is referred to in rule 2] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.



High Court Amendments-[Delhi].-Same as that of Gujarat.[Gujarat].-Re-number rule 4 as rule 4(1) and add the following as sub-rule (2) of rule 4:"(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to application under this rule."-(17-8-1961).[Himachal Pradesh].-Same as that of Gujarat.[Madhya Pradesh].-Same as that of Gujarat.[Orissa].-Add the following proviso:"Provided that in cases where the defendant had entered into contest by filing his defence, no suit shall be restored without notice to him."-(14-5-1984).[Punjab].-Same as that of Gujarat.

**5. Dismissal of suit where plaintiff after summons returned unserved, fails for [seven days] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 19, for " one month" (w.e.f. 1.7.2002).] to apply for fresh summons. -**

(1)[Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved the plaintiff fails, for a period of ] [Substituted by Act 24 of 1920, Section 2, for the original sub-rule (1).][seven days] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 19, for " one month" (w.e.f. 1.7.2002).][from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-(a)he has failed after using his best endeavours to discover the residence of the defendant, who has not been served, or(b)such defendant is avoiding service of process, or(c)there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.](2)In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.[Substituted by Act 24 of 1920, Section 2, for the original sub-rule (1).]

High Court Amendments-[Bombay].-In Order IX, in rule 5, for sub-rule (1), the following shall be substituted, namely:"5. (1) Dismissal of suit where plaintiff after summons returned unserved fails for two months to apply for fresh summons.-Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of two months from the next hearing of the suit to apply for issue of a fresh summons the Court, shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that(a) he has failed, after using his best endeavour to discover the residence of the defendant who has not been served, or(b) such defendant is avoiding service of process, or(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit."-(31-12-1987).[Kerala].-In Order 9, in rule 5(i) for the existing marginal note the following shall be substituted, namely:-"Dismissal of suit where plaintiff fails to apply for steps."(ii) in sub-rule (1) for the words "three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers" the words "one month from the next hearing of the suit or from the notice regarding the non-service of summons given by the Court to the plaintiff or his counsel" shall be substituted.-(9-6-1959).[Orissa]Substitute the following for the existing rule 5:"5. Dismissal of suit where plaintiff, after summons returned unserved, fails to file necessary requisites for fresh summons. (1) where after summons have been issued to the

defendant, or to one of similar defendants, and returned unserved, the plaintiff fails to file necessary requisites for the issue of a fresh summons within the period fixed by the Court it shall make an order that the suit be dismissed as against such defendant, and(2) in such a case the plaintiff may (subject to the law of limitation) bring a fresh suit. "- (3-5-1968).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

## **6. Procedure when only plaintiff appears. -**

(1)Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-(a)[ ] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for clause (a) (w.e.f 1.2. 1977).]When summons duly served.-if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte.(b)When summons not duly served.-if it is not proved that the summons was duly serve, the Court shall direct a second summons to be issued and served on the defendant;(c)When summons served but not in due time.-if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.(2)Where it is owing to the plaintiffs' default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

## **7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. -**

Where the Court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.

High Court Amendments-[Patna].-In Rule 6(1)(c) delete the words "and shall direct notice of such day to be given to the defendant" and substitute a full stop for the comma, after the words "fixed by Court".-(6-5-1947).[Rajasthan].-Substitute the words "the Court may make an order that the suit shall be heard ex parte" for "the Court may proceed ex parte".-(30-6-1956).High Court Amendment-[Rajasthan].-Substitute the following for rule 7:"7. Where the Court has adjourned the hearing of the suit after making an order that it be heard ex parte and the defendant at or before such hearing appears and assigns good cause for his previous non-appearance, the Court may upon such terms as it directs as to costs or otherwise, set aside the order for the hearing of the suit ex parte and hear the defendant in answer to the suit as if he had appeared on the day fixed for his appearance."-(30-6-1956).

## **8. Procedure where defendant only appears. -**

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such

admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

## **9. Decree against plaintiff by default bars fresh suit. -**

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit. (2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Assam].-Same as that of Calcutta.[Calcutta].-Re-number sub-rule (2) as sub-rule (3) and insert therein after the words "notice of the application" the words "with a copy thereof (or concise statement as the case maybe)". Insert the following as sub-rule (2) before sub-rule (3) as so re-numbered: "The plaintiff shall, for service on the opposite parties, present along with his application under this rule either (i) as many copies thereof on plain paper as there are opposite parties, or (ii) if the Court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements." [Delhi].-Same as that of Punjab.[Gujarat].-Same as that of Madras-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-The following shall be added as sub-rule (3): "(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this rule." [Punjab].-To rule 9(1), the following proviso shall be added: "Provided that the plaintiff shall not be precluded from bringing another suit for redemption of a mortgage, although a former suit may have been dismissed for default." (ii) Add as sub-rule (3) the following: "(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1)."

## **10. Procedure in case of non-attendance of one or more of several plaintiffs. -**

Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

## **11. Procedure in case of non-attendance of one or more of several defendants. -**

Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

## **12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person. -**

Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively who do not appear. **Setting Aside Decrees Ex Parte**

## **13. Setting aside decree ex parte against defendant. -**

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also: [Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim] [Added by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] [Explanation.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-Add the following further proviso: "Provided also that no such decree shall be set aside merely on the ground of irregularity in the service of summons if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim." [Andhra Pradesh].-Same as that of Madras. [Assam].-Same as that of Calcutta. [Bombay].-In Order IX, for the existing rule 13 and its marginal note, substitute the following as rule 13 and marginal note: "13. Setting aside decree ex parte against defendant.-In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that there was sufficient cause for his failure to appear when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit: 'Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also: Provided also that no such decree shall be set aside merely on the ground of irregularity of service of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of

hearing in sufficient time to enable him to appear and answer the plaintiff's claim. Explanation I.-Where a summons has been served under Order 5, rule 15, on an adult male member having an interest adverse to that of the defendant in the subject-matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule. Explanation II.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree."-(1-10-1983).[Calcutta].-Re-number rule 13 as rule 13 (1) and add the following as rule 13(2):"(2) The defendant shall, for service on the opposite party, present along with his application under this rule either(i) as many copies thereof on plain paper as there are opposite parties; or(ii) if the Court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf a like number of concise statements."[Delhi].-Same as that of Punjab.[Gujarat].-Same as that of Punjab-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Add the following further proviso to rule 13:"Provided further that no such decree shall be set aside merely on the ground of irregularity in the service of summons, if the Court is satisfied that the defendant knew the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In Order 9, for rule 13, the following shall be substituted, namely:"13. (1) In any case in which a decree is passed ex parte against a defendant he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with this suit:Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also after notice to them:Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing in sufficient time to appear and answer the plaintiff's claim.(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1)."- (9-6-1959).[Madhya Pradesh].-(a) Existing rule 13 shall be re-numbered as sub-rule (1) and for the words "he was prevented by any sufficient cause from appearing" the words "there was sufficient cause for his failure to appear" shall be substituted. Add the following as an additional proviso and Explanation to rule 13(1):"Provided also that no such decree shall be set aside merely on the ground of irregularity in the services of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim. Explanation.-Where a summons has been served under Order 5, rule 15, on an adult male member having an interest adverse to that of the defendant in the subject-matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule."(b) after sub-rule (1), so re-numbered the following shall be inserted as sub-rule (2) namely:"(2) The provisions of section 5 of the Indian Limitation Act (IX of 1908), shall apply to applications under sub-rule (1)."- (16-9-1960).[Madras].-Re-number rule 13 as rule 13(1). Insert the following as proviso to sub-rule (1) of rule 13 of Order 9:"Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it be satisfied that the defendant had notice of the date of hearing in

sufficient time to appear and answer the plaintiff's claim."Add the following as sub-rule (2) to rule 13:"(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1)."[Orissa].-Add the following:"Explanation 11.-A summons served under Order 5, rule 1 on an adult male member having an interest adverse to that of the defendant in the subject-matter of the suit shall not be deemed to have been duly served within the meaning of this rule."-(14-5-1984).[Punjab].-Rule 13 shall be numbered as rule 13(1) and the following sub-rule (2) shall be added to it, namely:"(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications made under sub-rule (1)."

#### **14. No decree to be set aside without notice to opposite party. -**

No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

High Court Amendments-[Assam].-Same as that of Calcutta.[Calcutta].-Cancel the word "thereof" in rule 14, Order 9, and substitute therefor the following words:-"together with the copy thereof (or concise statement, as the case may be)."Order 9, Rule 15[Bombay].-In Order IX, after the existing rule 14, add the following rule with marginal note as new rule 15 and its marginal note:"15. Application of the provisions of this Order to appeals.-In the application of this Order to appeals, so far as may be, the word 'plaintiff' shall be held to include an appellant, the word 'defendant', a respondent, and the word 'suit' an appeal."-(1-10-1983).[Gujarat].-Same as that of Bombay-(17-8-1961).[Karnataka].-Add the following as rule 15:"15. The provisions of section 5 of the Indian Limitation Act, 1963, shall apply to an application made under sub-rule (1) of rule 9 or rule 13."-(R.O.C. No. 2526/1959, dated 9-2-1967).

## **ORDER – X**

### **EXAMINATION OF PARTIES BY THE COURT**

#### **1. Ascertainment whether allegations in pleadings are admitted or denied. -**

At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

#### **2. [ Oral examination of party, or companion of party. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 2, (w.e.f. 1.2.1977).]-**

(1)At the first hearing of the suit, the Court-(a)shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and(b)may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is

accompanied.(2)At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.(3)The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.]

### **3. Substance of examination to be written. -**

The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

### **4. Consequence of refusal or inability of pleader to answer. -**

(1)Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.(2)If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

## **ORDER – XI**

### **Discovery and Inspection**

#### **1. Discovery by interrogatories. -**

In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose :Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

#### **2. Particular interrogatories to be submitted. -**

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

### **3. Costs of interrogatories. -**

In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

### **4. Form of interrogatories. . -**

Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

### **5. Corporations. -**

Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

### **6. Objections to interrogatories by answer. -**

Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, [or on the ground of privilege or any other ground] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977).], may be taken in the affidavit in answer.

### **7. Setting aside and striking out interrogatories. -**

Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

### **8. Affidavit in answer, filing. -**

Interrogatories shall be answered by affidavit to be filed within ten days or within such other time as the Court may allow.



## **9. Form of affidavit in answer. -**

An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

## **10. No exception to be taken. -**

No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

## **11. Order to answer or answer further. -**

Where any person interrogated omits to answer, or answer insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

## **12. Application for discovery of documents. -**

Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit :Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

## **13. Affidavit of documents. -**

The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

## **14. Production of documents. -**

It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

## **15. Inspection of documents referred to in pleadings or affidavits. -**

Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document [or who has entered any document in any list annexed to his pleadings] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1.2.1977).] or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse with the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs as otherwise as the Court shall think fit.

## **16. Notice to produce. -**

Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

## **17. Time for inspection when notice given. -**

The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

## **18. Order for inspection. -**

(1)Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit :Provided that the order shall not be made when and so far as the Court shall be of opinion that, it is not necessary either for disposing fairly of the suit or for saving costs.(2)Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

## **19. Verified copies. -**

(1)Where inspection of any business books is applied for, the Court may , if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations :Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.(2)Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege [unless the document relates to matters of State.] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](3)The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether anyone or more specific documents, to be specified in the application, is or are, or has or have at an time been, in his possession or power, and , if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time and, in his possession or power the document or documents specified in the application, and that they relate to the matters in questions in the suit, or to some of them.

## **20. Premature discovery. -**

Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

## **21. Non-compliance with order for discovery. -**

(1)[Rule 21 renumbered as sub.rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).]Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and [an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.] [Substituted by Act No.104 of 1976 for " an order may be made accordingly" (w.e.f. 1.2.1977).](2)[ Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1.2.1977).]

## **22. Using answers to interrogatories at trial. -**

Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer :Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

## **23. Order to apply to minors. -**

This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of the persons under disability.

High Court Amendment-Rules 24,25 and 26-[Karnataka].-Add the following rules after rule 23:"24. If where inspection has been ordered out of Court or is to be given out of Court, it is found that a satisfactory inspection cannot be obtained, or if it is shown that the documents are being or are likely to be tampered with, an application may be made to Court for an order for the deposit and inspection of the documents in Court. Such application shall be supported by affidavit. Notice of such application shall be given to the party affected thereby and orders passed only after hearing both sides, if they appear on the date fixed for hearing in the notice, or on any other date to which the hearing of the same may be adjourned thereafter.25. A defendant upon whom summons to appear and answer the plaint has been served, shall on entering appearance before filing his written statement be entitled alongwith his pleader, if any, to inspect all documents produced with the plaint and lying in the custody of the Court.26. A plaintiff as well as every defendant on whom summons has been served and who has entered appearance shall be entitled alongwith his pleader, if any, to inspect all documents produced into Court by any party to the suit."-(R.O.C. No. 2526/1959, dated 9-2-1967).

## **ORDER – XI**

**Disclosure, discovery and inspection of documents in suits before the Commercial Division of a High Court or a Commercial Court**[Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).]

### **1. Disclosure and discovery of documents.—**

(1)Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:—(a)documents referred to and relied on by the plaintiff in the plaint;(b)documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;(c)nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—(i)for the cross-examination of the defendant's witnesses, or(ii)in answer to any case set up by the defendant subsequent to the filing of the plaint, or(iii)handed over to a witness

merely to refresh his memory.(2)The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.(3)The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.(4)In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.(5)The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.(6)The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.(7)The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including—(a)the documents referred to and relied on by the defendant in the written statement;(b)the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;(c)nothing in this Rule shall apply to documents produced by the defendants and relevant only—(i)for the cross-examination of the plaintiff's witnesses,(ii)in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or(iii)handed over to a witness merely to refresh his memory.(8)The list of documents filed with the written statement or counter-claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.(9)The written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents.(10)Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or

counter-claim.(11)The written statement or counter-claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.(12)Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

## **2. Discovery by interrogatories. —**

(1)In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.(2)On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.(3)In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.(4)Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, (5 of 1908) with such variations as circumstances may require.(5)Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.(6)Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.(7)Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.(8)Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.(9)An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908, (5 of 1908), with such variations as circumstances may require.(10)No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.(11)Where any person

interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct.

### **3. Inspection. —**

(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter-claim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event. (2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce. (3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing. (4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order. (5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court. (6) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

### **4. Admission and denial of documents. —**

(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court. (2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:—(a) correctness of contents of a document; (b) existence of a document; (c) execution of a document; (d) issuance or receipt of a document; (e) custody of a document. Explanation.—A statement of admission or denial of the existence of a document made in accordance with sub-rule (2) (b) shall include the admission or denial of the contents of a document. (3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court. (4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever. (5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement. (6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, – costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party. (7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

## **5. Production of documents. —**

(1)Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.(2)Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).(3)Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.(4)The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

## **6. Electronic records. —**

(1)In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000 (21 of 2000)), furnishing of printouts shall be sufficient compliance of the above provisions.(2)At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.(3)Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify—(a)the parties to such Electronic Record;(b)the manner in which such electronic record was produced and by whom;(c)the dates and time of preparation or storage or issuance or receipt of each such electronic record;(d)the source of such electronic record and date and time when the electronic record was printed;(e)in case of email ids, details of ownership, custody and access to such email ids;(f)in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;(g)deponent's knowledge of contents and correctness of contents;(h)whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;(i)that the printout or copy furnished was taken from the original computer or computer resource.(4)The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.(5)The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.(6)Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

## **7. Certain provisions of the Code of Civil Procedure, 1908 not to apply. —**

For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.]



## **ORDER – XII**

### **ADMISSION**

#### **1. Notice of admission of case. -**

Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

#### **2. Notice to admit documents. -**

Either party may call upon the other party [to admit, within ] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 62, for " to admit any document" (w.e.f. 1.2.1977).][seven] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 22, for " fifteen " (w.e.f. 1.7.2002).][days from the date of service of the notice any document,] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 62, for " to admit any document" (w.e.f. 1.2.1977).] saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

High Court Amendments-[Allahabad].-In rule 2 of Order XII(i) insert the words "without sufficient cause" after the words "neglect to admit";(ii) substitute the words "such special" for the word "the" occurring after the words "after such notice";(iii) insert a comma and after that the words "as may be fixed by the Court not exceeding fifty rupees for each document" after the words "any such document"; and(iv) delete the comma and the words "unless the Court otherwise directs" and the semicolon thereafter occurring after the words "whatever the result of the suit may be".-(1-6-1957).[Patna].-At the end of rule 2, add the following clause:-"The Court may penal costs in case of wrongful or unreasonable refusal to admit documents irrespective of the result of the litigation."-(26-7-1972).

#### **2A. [ Document to be deemed to be admitted if not divided after service of notice to admit documents. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

(1)Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability :Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.(2)Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.]

### **3. Form of notice. -**

A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

### **3A. [ Power of Court to record admission. [Inserted by Act 66 of 1956, Section 14 (w.e.f. 1.1.1957).]-**

Notwithstanding that no notice to admit documents has been given under rule 2, the Court, may at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall in such a case, record whether the party admits or refuses or neglects to admit such document.]

### **4. Notice to admit acts. -**

Any party, may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:[\*\*\*] [Second proviso omitted by the Code of Civil Procedure (Amendment) Act, 1999, Section 22 (w.e.f. 1.7.2002).]

### **5. Form of admissions. -**

A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

### **6. [ Judgment on admissions. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 6 (w.e.f.1.2.1977).]-**

(1)Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.(2)Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.]

## **7. Affidavit of signature. -**

An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

## **8. Notice to produce documents. -**

Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time it was served.

## **9. Costs. -**

If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby, shall be borne by the party giving such notice.

# **ORDER – XIII**

## **PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS**

### **1. Original documents to be produced at or before the settlement of issues.-**

(1)The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed alongwith plaint or written statement.(2)The Court shall receive the documents so produced :Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.(3)Nothing in sub-rule(1) shall apply to documents-(a)produced for the cross-examination of the witnesses of the other party; or(b)handed over to a witness merely to refresh his memory.

High Court Amendments-[Patna].-In rule 1, after the words, "at the first hearing of the suit", add "or where issues are framed, on the day when issues are framed, or within such further time as the Court may permit".[Punjab, Haryana and Chandigarh].-Substitute sub-rule (1) as under:"The parties or their pleaders shall produce at the first hearing of the suit all the documentary evidence of every description in their possession or power, either in original or photostat copy thereof, on which they intend to rely and which has not already been filed in Court, and all documents which the Court has ordered to be produced. "-(1-5-1975).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

### **3. Rejection of irrelevant or inadmissible documents. -**

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

### **4. Endorsements on documents admitted in evidence. -**

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :-(a) the number and title of the suit, (b) the name of the person producing the document, (c) the date on which it was produced, and (d) a statement of its having been so admitted, and the endorsement shall be signed or initialled by the Judge. (2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

High Court Amendments-[Bombay].-In Order XIII, rule 4, substitute a colon for the full stop at the end of sub-rule (1) and add thereafter the following proviso: "Provided that in proceedings in the Bombay City Civil Court, the endorsement may be signed or initialled by such officer as the Principal Judge may authorise in this behalf."-(1-10-1983). [Patna].-In sub-rules (1) and (2) after the word "Judge" add the following: "or, in the case of a High Court, by an officer in Court under the order of the Judge or one of the judges."-(5-2-1971). [Punjab and Haryana].-At the end of rule 4, Order XIII, add the following proviso: "Provided that where the Court is satisfied that the document, not endorsed in the manner laid down in the above rule, was in fact, admitted in evidence, it shall treat the document as having been properly admitted in evidence unless non-compliance with this rule has resulted in miscarriage of justice."-(28-5-1974).

### **5. Endorsements on copies of admitted entries in books, accounts and records. -**

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891) where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or a or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry. (2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-(a) where the record, book or account is produced on behalf of a party, then by that party, or (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party. (3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after accusing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

High Court Amendments-[Bombay].-In Order XIII, rule 5, substitute a colon for the full stop at the end of sub-rule (3) and add thereafter the following proviso:"Provided that where the entry referred to in this rule is in a language other than English or the language of the Court, the provision contained in the proviso to sub-rule (2) of rule 17 of Order VII shall apply mutatis mutandis to such an entry."-(1-10-1983).[Gujarat].-Same as that of Bombay but omit the words "English or".-(17-8-1961).

## **6. Endorsements on documents rejected as inadmissible in evidence. -**

Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b), and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

High Court Amendment-[Bombay].-In Order XIII, rule 6, substitute a colon for the full stop at the end of the rule and add thereafter the following proviso:"Provided that in proceedings filed in the Bombay City Civil Court the endorsement may be signed by such officer as the Principal Judge may authorise in this behalf."-(1-10-1983).

## **7. Recording of admitted and return or rejected documents. -**

(1)Every document which has been admitted in evidence or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.(2)Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XIII, rule 7, after the existing sub-rule (2), add the following subrule with marginal note as new sub-rule (3) and its marginal note:"(3) Documents in language other than English or Court language, or in script other than Devanagari.-Every document produced in evidence which is not written in the Court language or in English shall be accompanied by a correct translation into English or the Court language, and every document which is written in the Court language, in a script other than Devanagari shall be accompanied by a correct translation into Devanagari script. If the document is admitted in evidence the opposite party shall either admit the correctness of the translation or the transliteration or submit his own translation or transliteration of the document.

"-(1-10-1983).[Kerala].-Same as that of Madras.-(9-6-1959).[Madhya Pradesh].-The following shall be added as sub-rule (3):"(3) Every document produced in evidence, which is not written in the Court language or in English shall be accompanied by a correct translation into English; and every document which is written in the Court language but in a script other than Devanagari shall be accompanied by a correct transliteration into Devanagari script. If the document is admitted in evidence the opposite party shall either admit the correctness of the translation or transliteration or submit his own translation or transliteration of the document."-(16-9-1960).[Madras].-Add the following proviso to Order 13, rule 7(2):"Provided that no document shall be returned which by force of the decree has become wholly void or useless."

## 8. Court may order any document to be impounded. -

Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court think fit.

## 9. Return of admitted documents. -

(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same, - (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of : [Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor - (a) delivers to the proper officer for being substituted for the original, - (i) in the case of a party to the suit, a certified copy, and (ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and (b) undertakes to produce the original, if required to do so :] Provided also, that no document shall be returned with, by force of the decree, has become wholly void or useless. (2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it. [Subs by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for the proviso (w.e.f. 1.2. 1977).]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XIII, for the existing rule 9 and its marginal note, substitute the following as rule 9 an marginal note:"9. Return of admitted documents.-(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor(a) delivers to the proper officer for being substituted for the original,-(i) in the case of a party to the suit, a certified copy, and(ii) in the case of any other person, an ordinary copy, which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and(b) undertakes to produce the original, if required to do so:Provided also that a copy of the decree and of the judgment filed with the memorandum of appeal under Order XLI, rule 1, may be returned after the appeal has been disposed of by the Court:Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it."-(1-10-1983).[Delhi].-Same as that of Punjab.[Gujarat].-Insert rule 9(2) after re-numbering the existing sub-rule (2) as sub-rule (3):-"(2)

Where the document has been produced by a person who is not a party to the suit, the Court may order and at the request of the person applying for the return of the document shall order the party at whose instance the document was produced to pay the cost of preparing certified copy."Between the first and second proviso to sub-rule (1) of rule 9, the following proviso be inserted:"Provided also that a copy of the decree and of the judgment filed with the memorandum of appeal under Order XLI, rule 1, may be returned after the appeal has been disposed of by the Court."-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Add the following sub-rules to rule 9:"(3) Every application for return of a document under the first proviso to sub-rule (1) shall be verified in the manner prescribed for verification of plaints and shall set forth facts justifying the immediate return of the original.(4) Same as Madras.(5) Same as Madras.-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-Insert the following as sub-rule (2) of rule 9 and renumber the present sub-rule (2) as sub-rule (3):"(2) Where the document has been produced by a person who is not a party to the suit, the Court, may order and, at the request of the person applying for the return of the document, shall order the party at whose instance the documents was produced to pay the cost of preparing a certified copy."-(16-9-1960).[Madras].-The following sub-rules shall be inserted after sub-rule (2), namely:"(3) Every application for return of a document under the first proviso to sub-rule (1) shall be made by a verified petition and shall set forth facts justifying the immediate return of the original.(4) The Court may make such order as it thinks fit for the cost of any or all the parties to any application under sub-rule (1). The Court may further direct that any costs incurred in complying with or paid on application under sub-rule (1) or incurred in complying with the provisions of rule 5 of this Order, shall be included as costs in the cause.(5) Subject to the provisions of rule 8 above, where a document is produced by a person who is not a party to the suit and such person applies for the return of the document as hereinbefore provided and undertakes to produce it whenever required to do so, the Court shall, except for reasons to be recorded by it in writing, require the party on whose behalf the document was produced, to substitute with the least possible delay, a certified copy of the original, and shall thereupon cause the original document to be returned to the applicant and may further make such order as to costs and charges in this behalf as it thinks fit. If the copy is not so provided within the time fixed by the Court, the original document shall be returned to the applicant without further delay."[Patna].-Add the following as sub-rule (1-A) in rule 9, Order 13:"(1-A) Where a document is produced by a person who is not a party in the proceeding, the Court may require the party on whose behalf the document is produced to substitute a certified copy for the original as hereinbefore provided."[Punjab, Haryana and Chandigarh].-Rule 9(1)-Add the following proviso as the third proviso:"Provided further that the cost of such certified copy shall be recoverable as a fine from the party at whose instance the original document has been produced."

## **10. Court may send for papers from its own records or from other Courts. -**

(1)The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other suit or proceedings, and inspect the same.(2)Every application made under this rule (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the

production of the original is necessary for the purposes of justice.(3)Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

## **11. Provisions as to documents applied to material objects. -**

The provisions therein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

High Court Amendments-Rules 12 and 13-[Allahabad].-Insert the following as rules 12 and 13 to Order 13:"12. Every document not written in the Court vernacular or in English, which is produced (a) with a plaint, or (b) at the first hearing, or (c) at any other time tendered in evidence in any suit, appeal or proceeding, shall be accompanied by a correct translation of the document into the Court vernacular. If any such document is written in the Court vernacular but in characters other than the ordinary Persian or Nagri characters in use, it shall be accompanied by a correct transliteration of its contents into the Persian or Nagri character.-(22-5-1915).The person making the translation or transliteration shall give his name and address and verify that the translation or transliteration is correct. In case of a document written in a script or language not known to the translator or to the person making the transliteration,the person who reads out the original document for the benefit of the translator or the person making the transliteration shall also verify the translation and transliteration by giving his name and address and stating that he has correctly read out the original document. "-(10-12-1932)."13. When a document included in the list, prescribed by rule 1, has been admitted in evidence, the Court shall, in addition to making the endorsement prescribed in rule 4(1), mark such document with serial figures in the case of documents admitted as evidence for a plaintiff, and with serial letters in the case of documents admitted as evidence for a defendant, and shall initial every such serial number or letter. When there are two or more parties defendants, the documents of the first party defendant may be marked A-1, A-2, A-3, etc., and those of the second party B-1, B-2, B-3, etc. When a number of documents of the same nature is admitted, as for example, a series of receipts for rent, the whole series shall bear one figure or capital letter or letters and a small figure or small letter shall be added to distinguish each paper of the series."-(22-5-1915 and 11-4-1936).Rule 12-[Karnataka].-Add the following as rule 12:"12. Where any document not written in the language of the Court is produced either with the plaint or with the written statement or at the first hearing or is at any other time tendered in evidence in any suit the Court may require that it shall be accompanied by a correct translation of the document into the language of the Court. Such translation shall be made either by the translator or interpreter of the Court, if any, or by any other competent person, and in the latter case the translation shall be verified by an affidavit of the person making the same declaring that he is acquainted with the character and language of the document and with the language of the Court and that the translation is true and correct to the best of his knowledge."-(R.O.C. No. 2526/1959, dated 9-2-1967).Rule 12-[Orissa].-Insert the following as a new rule 12 to Order XIII:"12. Every document not written in Oriya or English, which is produced: (a) with a plaint, or (b) at the first hearing, or (c) at any other time tendered in evidence in any suit, appeal or proceeding, shall be accompanied by a correct translation of the document into English. The person making the translation shall give his name and address and verify that the translation is correct. If the document is admitted in evidence the opposite party shall either admit



the correctness of the translation or submit his own translation of the document."-(29-12-1961).

## **ORDER – XIII-A**

[Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).]**Summary Judgment**

### **1. Scope of and classes of suits to which this Order applies. —**

(1)This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.(2)For the purposes of this Order, the word “claim” shall include—(a)part of a claim;(b)any particular question on which the claim (whether in whole or in part) depends; or(c)a counter-claim, as the case may be.(3)Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

### **2. Stage for application for summary judgment. —**

An applicant may apply for summary judgment at any time after summons has been served on the defendant:Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

### **3. Grounds for summary judgment. —**

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—(a)the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and(b)there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

### **4. Procedure. —**

(1)An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—(a)the application must contain a statement that it is an application for summary judgment made under this Order;(b)the application must precisely disclose all material facts and identify the point of law, if any;(c)in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—(i)include such documentary evidence in its application, and(ii)identify the relevant content of such documentary evidence on which the applicant relies;(d)the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;(e)the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.(2)Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days’ notice of:—(a)the date fixed for the hearing; and(b)the claim that is proposed to be decided by the Court at such hearing.(3)The respondent may, within thirty days of the receipt of notice of application of summary

judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—(a) the reply must precisely—(i) disclose all material facts; (ii) identify the point of law, if any; and (iii) state the reasons why the relief sought by the applicant should not be granted; (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—(i) include such documentary evidence in its reply; and (ii) identify the relevant content of such documentary evidence on which the respondent relies; (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be; (d) the reply must concisely state the issues that should be framed for trial; (e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and (f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

## **5. Evidence for hearing of summary judgment. —**

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—(a) file such documentary evidence; and (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing. (2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—(a) file such documentary evidence in reply; and (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing. (3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—(a) filed if such documentary evidence has already been filed; or (b) served on a party on whom it has already been served.

## **6. Orders that may be made by Court. —**

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—(a) judgment on the claim; (b) conditional order in accordance with Rule 7 mentioned hereunder; (c) dismissing the application; (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed; (e) striking out the pleadings (whether in whole or in part); or (f) further directions to proceed for case management under Order XV-A. (2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

## **7. Conditional order. —**

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b). (2) Where the Court makes a conditional order, it may:—(a) make it subject to all or any of the following conditions:—(i) require a party to deposit a sum of money in the Court; (ii) require a party to take a specified step in relation to the claim or defence, as the case may be; (iii) require a party, as

the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;(iv)impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and(b)specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

## **8. Power to impose costs. —**

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.

## **Order – XIV**

### **SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON**

#### **1. Framing of issues. -**

(1)Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.(2)Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.(3)Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.(4)Issues are of two kinds :(a)issues of fact,(b)issues of law.(5)At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.(6)Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

#### **2. [ Court to pronounce judgment on all issues. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 2 (w.e.f. 1.2.1977).]-**

(1)Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.(2)Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-(a)the jurisdiction of the Court, or(b)a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

### **3. Materials from which issues may be framed. -**

The Court may frame the issues from all or any of the following materials :-(a)allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;(b)allegations made in the pleadings or in answers to interrogatories delivered in the suit;(c)the contents of documents by either party.

### **4. Court may examine witnesses or documents before framing issues. -**

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

### **5. [ Power to amend and strike out, issues. [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 11, for rule 5 (w.e.f. 1.7.2002).]-**

(1)The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.(2)The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.]

### **6. Questions of fact or law may by agreement be stated in form of issues. -**

Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that upon the finding of the Court in the affirmative or the negative of such issue,-(a)a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;(b)some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or(c)one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

### **7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment. -**

Where the Court is satisfied, after making such inquiry as it deems proper,-(a)that the agreement was duly executed by the parties;(b)that they have a substantial interest in the decision of such question as aforesaid, and(c)that the same is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had

been framed by the Court, and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement, and, upon the judgment so pronounced a decree shall follow

## **Order – XV**

### **DISPOSAL OF THE SUIT AT THE FIRST HEARING**

#### **1. Parties not at issue. -**

Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

#### **2. One of several defendants not at issue. -**

(1)[Rule 2 renumbered as sub.rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.(2)[ Wherever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

#### **3. Parties at issue. -**

(1)Where the parties are at issue on some question of law or of fact, and issues have been frame by the Court as herein before provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and , if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit :Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.(2)Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

#### **4. Failure to produce evidence. -**

Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or any, if it thinks fit, after framing and recording issues, adjourn the suit for production

of such evidence as may be necessary for its decision upon such issues.

## **ORDER – XV-A**

**Case Management Hearing**[Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).]

### **1. First Case Management Hearing. —**

The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

### **2. Orders to be passed in a Case Management Hearing. —**

In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order—(a)framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908), after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;(b)listing witnesses to be examined by the parties;(c)fixing the date by which affidavit of evidence to be filed by parties;(d)fixing the date on which evidence of the witnesses of the parties to be recorded;(e)fixing the date by which written arguments are to be filed before the Court by the parties;(f)fixing the date on which oral arguments are to be heard by the Court; and(g)setting time limits for parties and their advocates to address oral arguments.

### **3. Time limit for the completion of a trial. —**

In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

### **4. Recording of oral evidence on a day-to-day basis. —**

The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

### **5. Case Management Hearings during a trial. —**

The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

## **6. Powers of the Court in a Case Management Hearing. —**

(1) In any Case Management Hearing held under this Order, the Court shall have the power to—(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A; (b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues; (c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so; (d) adjourn or bring forward a hearing if it finds sufficient reason to do so; (e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X; (f) consolidate proceedings; (g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed; (h) direct a separate trial of any issue; (i) decide the order in which issues are to be tried; (j) exclude an issue from consideration; (k) dismiss or give judgment on a claim after a decision on a preliminary issue; (l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI; (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material; (n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material; (o) delegate the recording of evidence to such authority appointed by the Court for this purpose; (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority; (q) order any party to file and exchange a costs budget; (r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit. (2) When the Court passes an order in exercise of its powers under this Order, it may—(a) make it subject to conditions, including a condition to pay a sum of money into Court; and (b) specify the consequence of failure to comply with the order or a condition. (3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

## **7. Adjournment of Case Management Hearing. —**

(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present: Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application. (2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

## **8. Consequences of non-compliance with orders. —**

Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—(a) condone such non-compliance by payment of costs to the Court; (b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or (c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.]

Uttar Pradesh.- In its application to the State of Uttar Pradesh add the following rule 5 after rule 4."5. Striking off defence for failure to deposit admitted rent, etc.- (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent. per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.Explanation 1.- The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.Explanation 2.- The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff.Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same." - [U.P. Act (57 of 1976) amended vide U.P. Govt. Gazzette dated 3.10.1981].

[Uttar Pradesh].-In its application to the State of Uttar Pradesh add the following ru?:.5:"5. Striking off defence for failure to deposit admitted rent, etc.-(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent. per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.Explanation 1.-The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.Explanation 2.-The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making



no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account \*[and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him] and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Explanation 3.-(1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account. (2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be. (3) The amount deposited under this rule may at any time be withdrawn by the plaintiff: Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited: Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."-U.P. Act (57 of 1976) (1-1-1977) and \*(w.e.f. 3-10-1981). High Court Amendment-[Bombay].-Insert the following as Order XV-A before Order XVI: "ORDER XV-A-STRIKING OFF DEFENCE IN A SUIT BY A LESSOR\*[(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit. In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.](2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.\*[(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination. Explanation.-The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.]- (1-10-1983 and \*11-1-1990).

## Order – XVI

### SUMMONING AND ATTENDANCE OF WITNESSES

**1. [ List of witnesses and summons to witnesses. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 1 (w.e.f. 1.2.1977).]-**

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose

to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.(2)A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.(3)The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such part shows sufficient cause for the omission to mention the name of such witness in the said list.(4)Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or

## **1A. [Production of witnesses without summons-.**

A subject to the provisions of sub-rule (3) of rule 1, and party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 1A (w.e.f. 1.2.1977).]

High Court Amendment-[Gujarat].-In Order XVI, add the following rule as rule 1-B:"1-B. (1) The Court may, on the application of any party for a summons for the attendance of any person, permit the service of such summons to be effected by such party.(2) When the Court has directed service of summons by the party applying for the same and such service is not effected, the Court may, if it is satisfied that reasonable diligence has been used by such party to effect such service, permit service to be effected by an officer of the Court."-(17-8-1961).

## **2. Expenses of witnesses to be paid into Court on applying for summons. -**

(1)The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.(2)Experts-In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.(3)Scale of expenses.-Where the Court is subordinate to High Court, regard shall be had, in fixing the scale of such expenses to any rules made in that behalf.(4)[] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]Expenses to be directly paid to witnesses.-Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XVI, rule 2, substitute a colon for the full stop appearing at the end of sub-rule (1) and add thereafter the following proviso:"Provided that where Government or a public officer being a party to a suit or proceeding as such public officer supported by Government in the litigation, applies for a summons to any public officer to whom the Civil Service Regulations apply to give evidence of facts which have come to his knowledge or of matters with which he has to deal as a public officer, or to produce any document from public records, the Government or the aforesaid officer shall not be

required to pay any sum of money on account of the travelling and other expenses of such witness."-(1-10-1983).[Calcutta].-Cancel clauses (1) and (2) and substitute therefor the following:(1) "The Court shall fix in respect of each summons such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the persons summoned, in passing to and from the Court in which he is required to attend, and for one day's attendance.(2) In fixing such an amount the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-Same as that of Bombay-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Kerala].-Sub-rule (4)-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-Add the following as an exception to sub-rule (I):-"Exception.-When applying for a summons for any of its own officers, Government and State Railway administrations will be exempt from the operation of sub-rule (1)."- (16-9-1960).[Madras].-Add clause (4):-"Where the summons is served on the witnesses by the party directly, the expenses mentioned in clause (1) shall be paid to the witnesses by the party or his agent."-(1-11-1951).[Orissa].-Same as that of Patna.[Patna].-Add the following proviso to Order XVI, rule 2(1):"Provided that the Government shall not be required to pay any expenses into Court under this rule when it is the party applying for the summons, and the person to be summoned is an officer serving under Government, who is summoned to give evidence of facts which have come to his knowledge, or of matters with which he has to deal, in his public capacity."-(13-2-1952).[Punjab].-Add the following as an exception to rule 2(1):"Exception.-When applying for a summons for any of its own officers, Government will be exempt from the operation of clause (1)."- (1-11-1966).

### **3. Tender of expenses to witness. -**

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XVI, rule 3, substitute a colon for the full stop appearing at the end of rule 3 and add thereafter the following proviso:"Provided that where the witness is a public officer to whom the Civil Service Regulations apply and is summoned to give evidence of facts which have come to his notice or of facts which he has had to deal, in his official capacity, or to produce a document from public records, the sum payable by the party obtaining the summons on account of his travelling and other expenses shall not be tendered to him. Such officer shall, however, be required to produce a certificate duly signed by the Head of his office showing the rates of travelling and other allowances admissible to him as for a journey on tour."-(1-10-1983).[Calcutta].-Substitute the following for rule 3:"3. The sum so fixed shall be tendered to the person summoned, at the time of serving of the summons, if it can be served personally:Provided-(i) that where the person summoned is a servant of any State Government whose pay exceeds Rs. 10 per mensem or whose headquarters are situated more than five miles from the Court, and he has been summoned to appear as a witness in his official capacity in a civil case to which Government is a party, the sum so fixed shall be credited to the Treasury;(ii) that where the person summoned is a finger-print expert of the Criminal Investigation Department and he is summoned to give evidence in private cases the sum so fixed, other than his travelling allowance, shall be credited to the Treasury;(iii) that where the person summoned is the

Government Examiner of questioned documents or his assistant and is summoned to give evidence or his opinion is sought in private cases the sum so fixed be credited to the Treasury;(iv) that where the person summoned is a servant of the Central Government or a State Railway or any other Commercial Department of Government and he is summoned to give evidence in his public capacity in a civil case, whether Government is or is not a party, the sum so fixed shall be credited in the Treasury to the Government or the State Railway, as the case maybe, to which the employee belongs; and(v) that where the person summoned is a State Railway employee and is summoned to give evidence in his private capacity in a civil Court in Assam, the sum so fixed shall be credited to the Railway to which he belongs."-(8-3-1948).[Delhi].Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-Proviso-Same as Bombay except that the last sentence in the proviso has been omitted.-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Kerala].-In rule 3, the following shall be added as para (2), namely:"In the case of employees of the Central Government or the State Government or Railway Administration, sums paid into Court as subsistence allowance or compensation shall be credited in the Treasury to the credit of the Central Government or the State Government or the Railway Administration, as the case may be."-(9-6-1959).[Madhya Pradesh].-For rule 3, substitute the following:"3. (1) The sum so paid into Court shall, except in case of a Government servant or a State Railway employee, be tendered to the person summoned, at the time of serving the summons, if it can be served personally.(2) Where a party other than Government in a suit requests the Court to summon a Government servant or a Railway employee as a witness or to produce official documents, the party shall deposit with the Court a sum, which in the opinion of the Court, will be sufficient to defray the travelling and other allowances of the Government servant or the Railway employee, as the case may be, as for a journey on tour and out of the sum so deposited the Court shall pay to the Government servant or the Railway employee concerned, the amount of travelling and other allowances admissible to him as for a journey on tour."-(16-9-1960).[Madras].-The following shall be added as a separate paragraph to rule 3, namely:-"In the case of employees of the Central Government or a State Railway sum paid into Court as subsistence allowance or compensation shall be credited in the Treasury to the credit of the Central Government or State Railway as the case may be."[Orissa].-Same as that of Patna (except for the letter and figure "Rs. 10" substitute "Rs. 200)."- (25-5-1984).[Patna].-Add the following as proviso to rule 3 of Order 16:"Provided that when the person summoned is an officer of Government, who has been summoned to give evidence in a case to which Government is a party, of facts which have come to his knowledge, or of matters which he has had to deal, in his public capacity, then(i) if the officer's salary does not exceed Rs. 10 a month, the Court shall, at the time of the service of the summons, make payment to him of his expenses as determined by rule 2 and recover the amount from the Treasury;(ii) if the officer's salary exceeds Rs. 10 a month, and the Court is situated not more than five miles from his headquarters, the Court may, at its discretion on his appearance, pay him the actual travelling expenses incurred;(iii) if the officer's salary exceeds Rs. 10 a month and the Court is situated more than five miles from his headquarters, no payment shall be made to him by the Court. In i such cases any expenses paid into Court under rule 2 shall be credited to Government."[Punjab].-For rule 3 substitute the following:"3. Tender of expenses to witness.- (1) The sum paid into a Court shall, except in the case of a Government servant, be tendered to the person summoned, at the time of serving the summons, if it can be served personally.(2) When the person summoned is a Government servants the sum so paid into Court shall be credited to Government.Exception (1).-In cases in which Government servants have to give

evidence at a Court situate not more than five miles from their headquarters, actual travelling expenses incurred by them may, when the Court considers it necessary, be paid to them. Exception (2).-A Government servant, whose salary does not exceed Rs. 10 per mensem, may receive his expenses from the Court."[Rajasthan].-Substitute for rule 3 the following:"The sum so paid into Court may, and if so required by the person summoned, c. \_ll be tendered to him at the time of serving the summons, if it can be served personally."-(24-7-1954). Order 16, Rule 3-A[Bombay].-In Order XVI, after the existing rule 3 (with the proviso last added thereto) add the following rule with marginal note as new rule 3-A and its marginal note:"3-A. Special provision for public servants summoned as witnesses in suits in which the Government is not a party.-(1) Notwithstanding anything contained in the foregoing rules, in all suits or other proceedings to which the Government is not a party, where a servant of the Central Government or a railway employee is summoned to give evidence and/or to produce documents in his official capacity, the Court shall direct the party applying for summons to deposit such sum of money as will, in the opinion of the Court be sufficient to defray the travelling and other expenses of the officer concerned as for a journey on tour; and on the deposit of such sum, the Court shall direct the summons to be issued and, out of the sum so deposited or out of any further sum which the Court may subsequently direct the party applying for summons to deposit, the Court shall, on the appearance before the Court of the officer summoned, pay him the amount of travelling and other expenses admissible to him as for a journey on tour under the rules applicable to his service.(2) The officer appearing before the Court in accordance with sub-rule (1) shall produce a certificate duly signed by the head of his office, showing the rates of travelling and other allowances admissible to him as for a journey on tour, and the amount payable to him by the Court shall be computed on the basis of rates specified in such certificate."-(1-10-1983).[Gujarat].-Same as Bombay except that for the words "official capacity" the words "public capacity" have been substituted.-(17-8-1961 and 16-4-1970).

#### **4. Procedure where insufficient sum paid in. -**

(1)Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.(2)Expenses of witnesses detained more than one day.-Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence, or may order such levy and discharge such person as aforesaid.

High Court Amendments-[Calcutta].-Cancel clause (1) and substitute therefor the following:"(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum so fixed is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and in case of

default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Madhya Pradesh].-In rule 4, insert the following between the words "summoned" and ,as appears" in sub-rule (1):"or, when such person is a Government servant or a State Railway employee, to be paid into Court."-(16-9-1960).[Punjab].-After the word "summoned" where it first occurs in rule 4(1) insert:-"or, when such person is a Government servant, to be paid into Court.

## **5. Time, place and purpose of attendance to be specified in summons. -**

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

## **6. Summons to produce document. -**

Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

## **7. Power to require persons present in Court to give evidence or produce document. -**

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

## **7A. [ Summons given to party for service [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

(1)The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.(2)The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.(3)The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.(4)If such summons, when tendered, is refused or if the person served refuses to sign and acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a

summons to a defendant.(5)Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.]

## **8. Summons how served. -**

Every summons [under this Order, not being a summons delivered to a party for service under rule 7A,] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977).] shall be served as nearly as may be in the same manner as a summons to a defendant and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

## **9. Time for serving summons. -**

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

## **10. Procedure whose witness fails to comply with summons. -**

(1)[Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-(a)shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or(b)may, if the certificate of the serving officer has been so verified. examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.](2)Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.(3)In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :Provided that no Court of Small Causes shall make an order for the attachment of immovable property.[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for sub.rule (1) (w.e.f. 1.2.1977).]

"High Court Amendments-[Allahabad].-(i) In sub-rule (1) substitute a colon for thetop after the word "summons" and add the proviso:"Provided that the Court need not examine the serving officer if the person has beensummoned only to produce a document and has attended and admitted receipt of the summons but has failed to produce the document."(ii) In sub-rule (2):(a) between the word "proclamation" and the word "requiring" insert the words, "or, if he is present, an order in

writing to be signed by him"; and(b) for the words "and a copy of such proclamation" substitute the words, "and a copy of the proclamation if issued".(iii) In sub-rule (3) between the word "proclamation" and the words "or at any time afterwards", insert the words "or an order in writing".-(17-9-1938).[Kerala].-In rule 10, for the proviso to sub-rule (3) the following shall be substituted, namely:"Provided that no Court exercising small cause jurisdiction shall make an order for the attachment of immovable property."-(9-6-1959).

### **11. If witness appears attachment may be withdrawn. -**

Where at any time after the attachment of his property, such person appears and satisfies the Court-(a)that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and(b)where he has failed to attend at the time and place named in a proclamation issued under the last proceeding rule, that he had no notice of such proclamation in time to attend, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

### **12. Procedure if witness fails to appear. -**

(1)[Rule 12 renumbered as sub.rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs to such attachment, together with the amount of the said fine, if any:Provided that, if the person whose attendance is required pays into Court the Costs and fine aforesaid, the Court shall order the property to be released from attachment.(2)[Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

### **13. Mode of attachment.. -**

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

### **14. Court may of its own accord summon as witnesses strangers to suit.. -**

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary [to examine any person, including a party to the suit] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f.1.2.1977).] and not called as witness by a party to the suit, the Court may, of its



own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.

## **15. Duty of persons summoned give evidence or produce document. -**

Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

## **16. When they may depart. -**

(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of. (2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Punjab].-Add the following: "(3) In the absence of the presiding officer the powers conferred by sub-rule (2) may be exercised by the Senior Subordinate Judge of the first class exercising jurisdiction at the headquarters of the district, or by any Judge or Court-official nominated by him for the purpose: Provided that a Court-official nominated for the purpose, shall not order a person, who fails to furnish such security as may be required by sub-rule (2), to be detained in prison, but shall refer the case immediately to the presiding officer on his return."-(23-1-1940).

## **17. Application of rules 10 to 13. -**

The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

## **18. Procedure where witness apprehended cannot give evidence or produce document. -**

Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

## **19. No witness to be ordered to attend in person unless resident within certain limits. -**

No one shall be ordered to attend in person to give evidence unless he resides-(a)within the local limits of the Court's ordinary original jurisdiction, or(b)without such limits but at a place less than [one hundred] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " fifty" (w.e.f.1.2.1977).] or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than [five hundred kilometers] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " two hundred miles" (w.e.f.1.2.1977).] distance from the Court-house :[Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1.2.1977).]

High Court Amendments-[Allahabad].-In Order 16, rule 19 (b):(i) Insert the words "or private conveyance run for hire" between the words "public conveyance" and "for five-sixths", and(ii) Substitute the word "three" for the word "two".-(4-4-1959).[Punjab].-Add the following proviso to rule 19 (b):"Provided that any Court situate in the State of Punjab may require the personal attendance of any witness residing in the Punjab or Delhi State."-(4-3-1955).

## **20. Consequence of refusal of party to give evidence when called on by Court. -**

Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

## **21. Rules as to witnesses to apply to parties summoned. -**

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Substitute the following:"21. (1) When any party to a suit is required by any other party thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.(2) When a party to a suit gives evidence on his own behalf, the Court may, in its discretion, permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing."[Gauhati].-Same as that of Calcutta.[Karnataka].-Same as that of Madras-(R.O.C. 2526/1959, dated 19-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Substitute the following for rule 21:21. Rules in case of parties appearing as witnesses.-(1) When any party to a suit is required by any other party thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far

as applicable.(2) When a party to a suit gives evidence on his own behalf, the Court may, in its discretion, permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing."Rules 22 and 23-[Allahabad].-Add the following to Order 16 as rules 22 and 23:-22.(1) Save as provided in this rule and in rule 2, the Court shall allow witnesses reasonable actual travelling expenses. Other expenses to be allowed to them shall be on the following scale, namely:(a) in the case of witnesses of the class of cultivators, labourers and persons, including Government servants of corresponding rank-rupee one per day;(b) in the case of witnesses of a better class, such as bhumidars and sirdars, traders, pleaders and persons including Government servants, of corresponding rank-rupee one and fifty naye paise to rupees three per day;(c) in the case of witnesses of a superior rank including Government servants-from rupees three and fifty naye paise to rupees six per day:Provided that where a Government servant is summoned to produce official documents or to give evidence of facts which came to his knowledge in the discharge of his public duties, he shall be paid travelling and other expenses at the rates admissible to him as for journeys on tour in accordance with the travelling allowance rules applicable to him.-(14-3-1953).(2) If a witness demands any sum excess of in what has been paid to him, such sum shall be allowed if he satisfies the Court that he has actually and necessarily incurred the additional expense.-(22-5-1915).IllustrationA post office or railway employee summoned to give evidence is entitled to demandfrom the party, on whose behalf or at whose instance he is summoned, the travelling and other expenses allowed to witnesses of the class or rank to which he belongs, and in addition the sum for which he is liable as payment to the substitute officiating during his absence from duty. The sum so payable in respect of the substitute will be certified by the official superior of the witness on a slip which the witness will present to the Court from which the summons was issued.-(22-5-1915 and 25-4-1936).(3) If a witness be detained for a longer period than one day the expenses of his detention shall be allowed at such rate, not usually exceeding that payable under clause (i) of this rule, as may seem to the Court to be reasonable and proper:Provided that the Court may, for reasons stated in writing, allow expenses on a higher scale than that hereinbefore prescribed.-(22-5-1915).23. In cases to which Government is a party, Government servants, whose salary exceeds Rs. 10 per mensem and all police constables whatever their salary may be who are summoned to give evidence in their official capacity at a Court situated more than five miles from their headquarters, shall be given a certificate of attendance by the Court in lieu of travelling and other expenses".-(7-2-1920).

[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **ORDER – XVI-A**

### **ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS**

#### **1. Definitions. -**

In this Order,-(a)"detained" includes detained under any law providing for preventive detention;(b)"prison" includes-(i)any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and(ii)any reformatory, borstal institution or other institution of a like nature.

## **2. Power to require attendance of prisoners to give evidence. -**

Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence :Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometres, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

## **3. Expenses to be paid into Court. -**

(1)Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the traveling and other expenses of the escort provided for the witness.(2)Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rule made by the High Court in that behalf.

## **4. Power of State Government to exclude certain persons from the operation of rule 2. -**

(1)The State Government may, at any time, having regard to the matters specified in sub-rule (2) by general or special order, direct that nay person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.(2)Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely :- (a)the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison; (b)the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and (c)the public interest, generally.

## **5. Officer in charge of prison to abstain from carrying out order in certain cases. -**

Where the person in respect of whom an order is made under rule 2 -(a)is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity; or (b)is under committal for trial or under remand pending trial or pending a preliminary investigation; or (c)is in custody for a period which would expire before the expiration of the time required for comply with the order and for taking him back to the prison in which he is confined or detained ; or (d)is a person to whom an order made by the State Government under rule 4 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reason for so abstaining.

## **6. Prisoner to be brought to Court in custody. -**

In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

## **7. Power to issue commission for examination of witness in prison. -**

(1)Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.(2)The provisions of Order XXVI shall, so far may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.

# **Order – XVII**

## **ADJOURNMENTS**

### **1. Court may grant time and adjourn hearing. -**

(1)[The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 26, for sub-rule (1)(w.e.f. 1.7.2002).](2)Costs of adjournment.-In every such case the Court shall fix a day for the further hearing of the suit, and [shall make such order as to costs occasioned by the adjournment or such higher costs as the court deems fit]:[Provided that,-(a)When the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.(b)no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.(c)the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.(d)where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.(e)where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not

ready as aforesaid.][Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 26, for " may make such order as it thinks fit with respect to the costs occasioned by the adjournment" (w.e.f. 1.7.2002).]

High Court Amendments-[Allahabad].-Add the following proviso:"Provided further that no such adjournment shall be granted for the purpose of calling a witness not previously summoned or named, nor shall any adjournment be utilised by any party for such purpose, unless the Judge has made an order in writing under the proviso to Order 16, rule 1." -(24-7-1926).[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Punjab].-(i) To rule 1, add the following as sub-rule (3):"(3) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1), the Court shall proceed with the suit forthwith."(ii) To rule 1(1) before the word "the Court" add the words "subject to the provisions of Order 23, rule 3".-(H.C. Notification No. 211, dated 21-7-1937).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

## **2. Procedure if parties fail to appear on day fixed, -**

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.[Explanation.-Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2. 1977).]

High Court Amendments-[Allahabad].-Add to rule 2:"Where the evidence, or a substantial portion of the evidence, of any party has already been recorded and such party fails to appear on such day, the Court may in its discretion proceed with the case as if such party were present, and may dispose of it on the merits.Explanation.-No party shall be deemed to have failed to appear if he is either present or is represented in Court by agent or pleader, though engaged only for the purpose of making an application."-(28-5-1943).[Andhra Pradesh].-At the end of rule 2, the following Explanation shall be added:-"Explanation.-The mere presence in Court of a party or his Counsel not duly instructed shall not be considered to be an appearance of the party within the meaning of this rule."-(27-4-1961).

## **3. Court may proceed notwithstanding either party fails to produce evidence, etc.. -**

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, [the Court may, notwithstanding such default,-(a)if the parties are present, proceed to decide the suit forthwith, or(b)if the parties are, or any of them is, absent, proceed under rule 2]. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-Put a comma after the first word "where" set thereafter the words "in a case to which rule 2 does not apply".-(17-1-1953).[Andhra Pradesh].-At the end of rule 3 add the following proviso:"Provided that in a case where there is default under this rule as well as default of appearance under rule 2, the Court will proceed under rule 2."-(27-4-1961).[Madhya Pradesh].-The following proviso shall be added to Order 17, rule 3:-"Provided that in a case where there is default under this rule as well as default of appearance under rule 2, the Court will proceed under rule 2."-(27-8-1976).

## **Order – XVIII**

### **HEARING OF THE SUIT AND EXAMINATION OF WITNESSES**

#### **1. Right to begin. -**

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

#### **2. Statement and production of evidence. -**

(1)On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.(2)The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.(3)The party beginning may then reply generally on the whole case.(3A)[Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.(3B)A copy of such written arguments shall be simultaneously furnished to the opposite party(3C)No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.(3D)The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.] [ Ins. by Act 22 of 2002, s. 12 (w.e.f. 1-7-2002).](3A)[A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.(3B)The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.(3C)A copy of such written arguments shall be furnished simultaneously to the opposite party.(3D)The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.(3E)No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.(3F)It shall be open for the Court to limit the time for oral submissions having regard

to the nature and complexity of the matter.][Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).][\*\*\*] [Sub-rule (4) omitted by the Code of Civil Procedure (Amendment) Act, 1999, Section 27 (w.e.f. 1.7.2002).]

(High Court Amendments-[Allahabad].-For the present rule 2, substitute the following:"2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case, indicating the relevancy of each of the documents produced by him, and the nature of the oral evidence which he proposes to adduce and shall then call his witnesses in support of the issues which he is bound to prove.(2) The other party shall then state his case in the manner aforesaid and produce his evidence (if any)."- (20-6-1936).[Andhra Pradesh].-Same as that of Madras.[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In Order XVIII, in rule 2, after sub-rule (3) the following Explanation shall be inserted, namely:"Explanation.-Nothing in this rule shall affect the discretion of the Court to direct or permit the examination of any witness at any stage of the suit for reasons to be recorded."-(9-6-1959).[Madhya Pradesh].-Add the following as sub-rule (4) to rule 2 :"(4) Notwithstanding anything contained in this rule, the Court may order that the production of evidence or the address to the Court may be in any order, which it may deem fit."- (16-9-1960).[Madras].-Add the following at the end of rule 2:"Explanation.-Nothing in this rule shall affect the jurisdiction of the Court, for reasons to be recorded in writing, to direct any party to examine any witness at any stage."[Orissa].-Insert the following at the end of rule 2 of Order 18:"Explanation.-Nothing in this rule shall affect the jurisdiction of the Court to direct any party to examine any witness at any stage, for reasons to be recorded by the Court in writing."- (7-5-1954).[Punjab].-At the end of rule 2, insert the following"Explanation I.-Nothing in this rule shall affect the jurisdiction of the Court, of its own accord or on the application of any party for reasons to be recorded in writing, to direct any party to examine any witness at any stage.Explanation II.-The expression "witness" in Explanation I shall include any party as his own witness".-(1-1-1966).[Rajasthan].-Insert the following as sub-rule (4) to rule 2:"(4) Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined: provided that the Court may on an application made in this behalf and for reasons to be recorded, permit him to appear as his own witness at a later stage."-(25-7-1957).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999/2002 Amendment Acts.]

### **3. Evidence where several issues. -**

Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

High Court Amendment-[Allahabad].-For the present rule, substitute the following:"3. (1) Where there are several issues the burden of proving some of which lies on the other party, the party



beginning may, at his option, either state his case in the manner aforesaid and produce his evidence on those issues or reserve the statement of his case and the production of his evidence on those issues by way of answer to the evidence produced(2) After both parties have produced their evidence, the party beginning may address the Court on the whole case; the other party may then address the Court on the whole case; and the party beginning may reply generally on the whole case, provided that in doing so he shall not, without the leave of the Court, raise questions which should have been raised in the opening of address."-(20.6.1936)

### **3A. Party to appear before other witnesses. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage.]

## **4. Recording of evidence.-**

[Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 12, for rule 4 (w.e.f. 1.7.2002).](1)In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed alongwith affidavit shall be subject to the orders of the Court.(1A)The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.(1B)A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.(1C)A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:[Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015)]Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.(2)The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it:Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit:(3)The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner, he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.(4)The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.(5)The report of the Commissioner shall be

submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.(6)The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.(7)The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.(8)The provisions of rules 16, 16-A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.]

High Court Amendment-[Rajasthan].-Insert the following words at the commencement of rule 4 of Order 18:-"Subject to the provisions of rule 1 of Order 16."5-7-1957).[N.B.-This High Court Amendment relates to the provisions as existed before the 2002 Amendment Act.]

## **5. How evidence shall be taken in appealable cases.**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 69, for the former rule (w.e.f. 1.2.1977).] -In cases in which an appeal is allowed, the evidence of each witness shall be,-(a)taken down in the language of the Court,-(i)in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or(ii)from the dictation of the Judge directly on a typewriter, or(b)if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.]

## **6. When deposition to be interpreted. -**

Where the evidence is taken down in language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

## **7. Evidence under Section 138. -**

Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

## **8. Memorandum when evidence not taken down by Judge. -**

Where the evidence is not taken down in writing by the Judge, [or from his dictation in the open Court, or recorded mechanically in his presence,] [Inserted by Act No.104 of 1976 (w.e.f. 1.2.1977).] he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

High Court Amendments-(Allahabad).-In Order 18, rule 8:(a) Insert the words "or from his dictation" after the words "in writing by the Judge".(b) Substitute the words "by the Judge or typed to his dictation, shall be signed by him," for the words "and signed by the

Judge".-(19-5-1956).[Bombay].-In Order XVIII for rule 8, substitute the following:"8.

Memorandum when evidence not taken down by Judge.-Where the evidence is not taken down in writing by the Judge, he shall be bound as the examination of each witness proceeds to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written or dictated and signed by the Judge and shall form part of the record.Exception.-However, to matters outside Greater Bombay, the State of Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli and from which there is no first appeal to the High Court the depositions given by the witnesses shall be recorded only in Marathi or in English where the witness deposes in English. In such matter it is not necessary to maintain memorandum as mentioned in the rule. "-(31-12-1987).[Calcutta].-Omit rule 8-(6-7-1967).[Punjab].-Same as that of Allahabad-(10-12-1974).

[9. When evidence may be taken in English. - (1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down.(2)Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 9 (w.e.f. 1.2.1977).]

## **10. Any particular question and answer may be taken down. -**

the Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

High Court Amendment-[Calcutta (Andaman and Nicobar Islands) ].-After the -ds "take down" add a comma and thereafter the words "or cause to be taken down from his dictation in open Court, in the language of the Court or in English".-(6-7-1967).

## **11. Questions objected to and allowed by Court. -**

Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

High Court Amendment-[Calcutta (Andaman and Nicobar Islands)].-"After the rds "take down" add a comma and thereafter the words "or cause to be taken down from his dictation in open Court, in the language of the Court or in English".-(6-7-1967).

## **12. Remarks on demeanour of witnesses. -**

The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

High Court Amendment-[Calcutta (Andaman and Nicobar Islands)].-Add the following at the end of the rule:-"or cause the same to be recorded under his dictation in opgficourt, in the language of the Court or in English."-(6-7-1967).

**13. [ Memorandum of evidence in unappealable cases. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 69, for former rule (w.e.f. 1.2.1977).]-**

In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.]

High Court Amendment-[Bombay].-In Order XVIII for rule 13, substitute the following:-"13. Memorandum of evidence in unappealable cases.-In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record. However, such memorandum outside Greater Bombay, the State of Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli shall be in Marathi or in English wherever the witnesses depose in English."-(31-12-1987).

**14. Judge unable to make such memorandum to record reasons of his liability.-**

[Omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), section 69 (w.e.f. 1.2.1977).]

**15. Power to deal with evidence taken before another Judge. -**

(1)Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.(2)The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.]

**16. Power to examine witness immediately. -**

(1)Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may upon the application of any party or of the witness, at any time after the institution of the suit, take the

evidence of such witness in manner herein before provided.(2)Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.(3)The evidence so taken shall be read over to the witness, and if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

## **17. Court may recall and examine witness. -**

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.]

## **17A. . Production of evidence not previously known or which could not be produced despite due diligence. -**

[Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), section 27(w.e.f. 1.7.2002).]

## **18. Power of Court to inspect. -**

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise [and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 27 (w.e.f. 1.7.2002).]

High Court Amendment.-[Madras].-The following shall be added at the end of rule 18:-"As such as may be, the Court shall record a memorandum of any relevant fact observed at such inspection.Such memorandum shall form part of the record of the cas."-(28.1.1959).

## **19. [ Power to get statements recorded on commission. [Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 27 (w.e.f. 1.7.2002).]-**

Notwithstanding anything contained in these rules, the Court may, instead of examining witnesses in open Court, direct their statements to be recorded on commission under rule 4-A of Order XXVI.]

Order 18, Rule 19High Court Amendments-[Allahabad].-Add the following as rule 19:"19. (1) The Judge shall record in his own hand in English \*[or Hindi] all orderspassed on applications, other than orders of a purely routine character.(2) The Judge shall record in his own hand in English \*[or Hindi] all admissions and denials of documents, and the \*\*[Judges notes] shall show how all documents tendered in evidence have been dealt with from the date of presentation down to the final order admitting them in evidence or rejecting them.(3) The Judge shall record the issues in his own hand in English \*[or Hindi], and the issues shall be signed by the Judge and shall form part of the [Judges notes]."-**(17-3-1923), \*(Added w.e.f. 22-10-1994) and** (substituted for "English proceedings" w.e.f. 22-10-1994).Explanation-"Judges notes" means the notes maintained by the

Judge in his own hand of the day-to-day proceedings.-(22-10-1994).[Rajasthan].-Add the following as rule 19:"19. Power to get statements recorded on commission.-Notwithstanding anything contained in these rules, the Court may instead of examining witnesses in open Court, direct their statements to be recorded on Commission under rule 4-A of Order 26."-(1-12-1973).[N.B.-These State Amendments relate to the provisions as existed before the 1999 Amendment Act. The Amendments made by the Rajasthan High Court have been incorporated in the Central Act by the 1999 Amendment Act.]

## **Order – XIX**

### **Affidavits**

#### **1. Power to order any point to be proved by affidavit. -**

Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Uttar Pradesh.- For the existing proviso, substitute the following:-"Provided that if it appears to the Court, whether at the instance of either party or otherwise and whether before or after the filing of such affidavit, that the production of such witness for cross-examination is necessary and his attendance can be procured, the Court shall order the attendance of such witness, whereupon the witness may be examined, cross-examined and re-examined."-[U.P. Act (57 of 1976)].Madhya Pradesh.- Insert the following rule, after rule 1:-"1A. Proof of fact by affidavit in certain cases.- Notwithstanding anything contrary to rule 1, the Court shall, in a suit or proceeding referred to in sub-rule 3-B of Order 1 and whether or not any proceeding under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 are pending before the Competent Authority appointed under that Act, call upon the parties to prove any particular fact or facts as it may direct, by affidavit, unless the Court looking to the nature and complexity of the suit or proceeding and for reasons to be recorded in writing deems it just and expedient to dispense with the proof of a fact or facts by affidavits."-[M.P. Act 29 of 1984].High Court Amendment-[Allahabad].-In its application to the State of Uttar Pradesh, insert the following rule, after rule 1:"1A. Power to permit ex parte evidence on affidavit.-Where the case proceeds ex parte, the Court may permit the evidence of the plaintiff to be given on affidavit."-(w.e.f. 3-10-1981).High Court Amendment-[Allahabad].-In its application to the State of Uttar Pradesh, insert the following rule, after rule 1"1A. Power to permit ex parte evidence on affidavit.-Where the case proceeds ex parte the Court may permit the evidence of the plaintiff to be given on affidavit."-(w.e.f. 3-10-1981]

#### **2. Power to order attendance of deponent for cross-examination. -**

(1)Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross examination of the deponent.(2)Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court

otherwise directs.

### **3. Matters to which affidavits shall be confined. -**

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: Provided that the grounds thereof are stated. (2) The costs of every affidavit which shall unnecessarily set forth matters of hear say or argumentative matter, or copies of or extracts from document, shall (unless the Court otherwise directs) be paid by the party filing the same.

### **4. [Court may control evidence. —**

(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court. (2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

### **5. Redacting or rejecting evidence. —**

A Court may, in its discretion, for reasons to be recorded in writing—(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or (ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

### **6. Format and guidelines of affidavit of evidence. —An affidavit must comply with the form and requirements set forth below:—**

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with; (b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper; (c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject; (d) an affidavit shall state—(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and (ii) the source for any matters of information or belief; (e) an affidavit should—(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file); (ii) be divided into numbered paragraphs; (iii) have all numbers, including dates, expressed in figures; and (iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.]] [Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015)]

Order 19, Rules 4 to 15 High Court Amendment-(Allahabad).-Add the following rules 4 to 15 to Order 19:-"4. Affidavits shall be entitled, "In the Court of... at... (naming such Court)." If the affidavit be in support of, or in opposition to an application respecting any case in the Court, it shall also be entitled in such case. If there be no such case, it shall be entitled. In the matter of the petition of.-(22-5-1915).5. Affidavits shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.-(22-5-1915).6. Every person making any affidavit shall be described therein in such manner as shall serve to identify him clearly; and where necessary for this purpose, it shall contain the full name, the name of his father, of his caste or religious persuasion, his rank or degree in life, his profession, calling, occupation or trade, and the true place of his residence.-(22-5-1915).7. Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts which are within his knowledge, and such facts shall be stated in separate paragraphs.-(22-5-1915).8. When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words "I affirm" or "I make oath and say".-(22-5-1915).9. Except in interlocutory proceedings, affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression "I am informed", and, "if such be the case" and verily believe it to be true"; and shall state the name and address of, and sufficiently describe for the purposes of identification, the person or persons from whom he received such information. When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of justice or other source, the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the facts disclosed in such documents.-(22-5-1915).10. When any place is referred to in an affidavit, it shall be correctly described. When in an affidavit, any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of the identification of such person, shall be given in the affidavit.-(22-5-1915).11. Every person making an affidavit for use in a civil Court, shall, if not personally known to the person before whom the affidavit is made, be identified to that person by someone known to him, and the person before whom the affidavit is made shall state at the foot of the affidavit the name address and description of him by whom the identification was made as well as the time and place of such identification. -(22-5-1915).11-A. Such identification may be made by a person:(a) personally acquainted with the person to be identified; or(b) satisfied, from papers in that person's possession or otherwise, of his identity:Provided that in case (b) the person so identifying shall sign on the petition or affidavit a declaration in the following form, after there has been affixed to such declaration in his presence the thumb impression of the person so identified.FORM I (name, address and description), declare that the person verifying this petition (or making this affidavit) and alleging himself to be A. B. has satisfied me, (here state by what means, e.g., from papers in his possession or otherwise) that he is A.B.-(18-2-1928).12. No verification of a petition and no affidavit purporting to have been made by a pardanashin woman who has not appeared unveiled before the person before whom the verification or affidavit was made, shall be used unless she has been identified in the manner already specified and unless such petition or affidavit be accompanied by an affidavit of identification of such woman made at the time by the person who identified



her.-(22-5-1915).13. The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if the person proposing to make such affidavit states that he has not read the affidavit or appears not to understand the contents thereof, or appears to be illiterate, the person before whom the affidavit is about to be made shall read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same, and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made.-(22-5-1915).14. The person before whom an affidavit is made, shall certify at the foot of the affidavit the fact of making of the affidavit before him and the time and place when and where it was made, and shall for the purpose of identification mark and initial any exhibits referred to in the affidavit.-(22-5-1915).15. If it be found necessary to correct any clerical error in any affidavit such correction may be made in the presence of the person before whom the affidavit is about to be made, and before, but not after, the affidavit is made. Every correction so made shall be initialled by the person before whom the affidavit is made, and shall be made in such manner as not to render it impossible or difficult to read the original word or words, figure or figures, in respect of which the correction may have been made.-(22-5-1915).

[ORDER 20] [The provisions of rules 1,3, 4 and 5 are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P. Act 4 of 1925), Section 16(2)]

## **ORDER – XX**

### **JUDGMENT AND DECREE**

#### **1. [ Judgment when pronounced.-**

[Substituted by Act 66 of 1956, Section 14, for rule 1 (w.e.f. 1.1.1957).](1)[The Court, after the case has been shall pronounce judgment in open Court either at once or, as soon thereafter as may be practicable, on some future day; and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleader: Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within fifteen days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond thirty days from the date on which the hearing of the case was concluded, adduce notice of the day so fixed shall be given to the parties or their pleader :][Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 13, for former sub-rule (1)(w.e.f. 1.7.2002).](1)[The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.][Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).](2)[ Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be

necessarty for the Court to read out the whole judgment ] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 70 (w.e.f. 1.2.1977).] [\*\*\*] [The words " but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced" omitted by the Code of Civil Procedure (Amendment) Act, 1999, Section 28 (w.e.f. 1.7.2002).](3)[ The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specilly empowered by the High Court in this behalf:Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as ma be necessary, be signed by the Judge, bear the date on which it was pronounceda, and form a part of the record.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 70 (w.e.f. 1.2.1977).]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order 20, rule 1(3) delete the words "if the Judge is specially empowered by the High Court in this behalf".-(1-10-1983).[Karnataka].-Renumber rule 1 as rule 1 (1) and add the following as sub-rule (2):-"(2) The judgment may be pronounced by dictation to a shorthand writer in open Court, where the Presiding Judge has been specially empowered in that behalf by the High Court. Where the Presiding Judge is not so empowered, the judgment shall be reduced to writing before it is pronounced."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Rule 1 shall be re-numbered as sub-rule (1) thereof and the following shall be inserted as sub-rule (2), namely:-"(2) The judgment may be pronounced by dictation to a shorthand writer in open Court."-(9-6-1959).[Madras].-The following was substituted for rule 1:-"(1) The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.(2) The judgment may be pronounced by dictation to a shorthand writer in open Court, where the Presiding Judge has been specially empowered in that behalf by the High Court."[N.B.-These High Court Amendments relate to the provisions as existed before the 1999/2002 Amendment Acts.]

## **2. Power to pronounce judgment written by judge's predecessor. -**

[A Judge shall] [Substituted by Code of Civil Procedure (Amendment) Act, 1976, Section 70, for " A judge may pronounce" (w.e.f. 1.2.1977).] pronounce a judgment written, but not pronounced, by his predecessor.

## **3. Judgment to be signed.-**

The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Gujarat].-In Order 20, rule 3, for full stop, appearing at the end of the rule, substitute a colon and add the following:-"Provided that where the judgment is pronounced by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall after making such corrections therein as may be necessary be signed by the Judge and shall bear the date of its pronouncement, and when the

judgment is once so signed by the Judge it shall not afterwards be altered or added to save as provided by section 152 or on review."-(16-3-1972).[Kamataka].-Delete rule 3 and substitute the following:-"3. The judgment shall bear the date on which it is pronounced and shall be signed by the Judge and when once signed shall not afterwards be altered or added to, save as provided by section 152 of the Code or upon review, provided also that where the Judge pronounces his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge."-(R.O.C. No. 2526/ 1959, dated 9-2-1967).[Kerala].-Same as that of Madras except that for the words "provided also that, where the Judge pronounces his judgment by dictation," the words "provided that where the judgment is pronounced by dictation" are substituted.-(9-6-1959).[Madras].-For rule 3, substitute the following:-"3. Judgment to be signed, transcript of shorthand.-The judgment shall bear the date on which it is pronounced and shall be signed by the Judge and when once signed shall not afterwards be altered or added to, save as provided by section 152 or on review: provided also that where the Presiding Judge is specifically empowered by the High Court to pronounce his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the judge."[Rajasthan].-In Order XX, the existing rule 3 shall be renumbered as sub-rule (1) of that rule, and after sub-rule (1) as so re-numbered the following sub-rules shall be inserted:--"(2) Where the judgment is pronounced by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the judge and shall bear the date of its pronouncement.(3) In cases where judgment is not written by the Judge in his own hand, and dictated and taken down verbatim by another person, each page of the judgment shall be initialled by the Judge."-(Notification dated 23-12-1964).

#### **4. Judgments of Small Cause Courts. -**

(1)Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.](2)Judgments of other Courts.-Judgments of other Courts contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

#### **5. Court to state its decision on each issue. -**

In suits in which issue, have been framed, the Court shall state its finding or decision, with the reasons therefore, upon separate issue, unless the finding upon any one or more of the issue is sufficient for the suit.

#### **5A. [Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.**

Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.][Inserted by the Code of Civil Procedure (Amendment) Act,

1976, Section 70 (w.e.f. 1.2.1977).]

## 6. Contents of decree.-

(1)The decree shall agree with the judgment; it shall contain the number of the suit, the [names and descriptions of the parties, their registered addresses,] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 70, for " names and description of the parties" (w.e.f. 1.2.1977).] and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.(2)The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.At that the costs payable to one party by the other(3)The Court may direct that the costs payable to one party by the other,shall be set off against any sum which is admitted or found to be due from the former to the latter.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XX, rule 6, for the existing sub-rule (1) and its marginal note,substitute the following as sub-rule (1) and marginal note:"6. Contents of decree.-(1) The decree shall agree with the judgment; it shall contain the date of presentation of the plaint, the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit."-(1-10-1983).[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 6 and substitute the following: "6. (1) The decree shall agree with the judgment; it shall contain the number of the suit, names and descriptions, of the parties, their respective addresses for service as originally set out in their pleadings or where they have been subsequently changed in accordance with rule 14 of Order VI of this Code, such modified addresses, the particulars of the claim and shall specify clearly the relief granted or other determination of the suit.(2) The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid.(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.(4) In all cases in which an element of champerty or maintenance is proved, the Court may provide in the final decree for costs on a special scale approximating to the actual expenses reasonably incurred by the defendant."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras (a)-(9-6-1959).[Madras].-(a) In rule 6 in sub-rule (1) after the words "descriptions of the parties" the word "their addresses for service", shall be inserted.(b) After sub-rule (2) the following be inserted, as sub-rule (2-A):"(2-A) In all cases in which an element of champerty or maintenance is proved, the Court may provide in the final decree for costs on a special scale approximating to the actual expenses reasonably incurred by the defendant."[Punjab, Haryana and Chandigarh].-(i) Substitute the following for rule 1, sub-rule (1):"(1) The decree shall agree with the judgment, it shall contain the number of the suit, the names and descriptions of the parties, their correct and latest addresses (which shall be filed by the parties at or before the final arguments) and particulars of the claim and shall specify clearly the relief granted or other determination of the suit."-(11-4-1975).(ii) After sub-rule (1), add the following:"(1-A) In addition to particulars mentioned in clause (1), the decree shall contain the addresses of the plaintiff and the defendant as given in Order VII, rule 19, and Order VIII, rule 11 or as subsequently alter under Order VII, rule 24, and Order VIII, rule 12, respectively. "-(10-2-1937).

## **6A. [Preparation of decree.-**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 28, for rules 6-A and 6-B (w.e.f. 1.7.2002).](1)Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.(2)An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

High Court Amendment-[Kerala].-In sub-rule (2) of rule 6-A of Order 20, for the words "the reasons for the delay", substitute "the reasons for the delay and the valuation of the suit or proceeding and the Court-fee thereon."-(w.e.f. 9-2-1988).[N.B.-This High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

## **6B. [Copies of judgments when to be made available.-**

[Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 28, for rules 6-A and 6-B (w.e.f. 1.7.2002).]Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.]

## **7. Date of decree. -**

The decree shall bear the day on which the judgment was pronounced, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

High Court Amendments-[Bombay].-In Order XX, rule 7, substitute a colon for the full stop appearing at the end of the rule and add thereafter the following proviso:"Provided that in proceedings taken in the Bombay City Civil Court the decree shall bear date the day on which the judgment was pronounced and it shall be engrossed in the office of the Registrar and be signed by him and sealed with the seal of the Court."-(1-10-1983).[Kerala].-To rule 7, the following proviso shall be added, namely:"Provided that the decrees of the High Court may be signed by the officer empowered in that behalf."-(9-6-1959).Order 20, Rule 7-A[Allahabad].-Add the following after rule 7:"7-A. Formal order.-A Court, other than a Court subordinate to the District Court exercising insolvency jurisdiction, passing an order under section 144 or an order against which an appeal is allowed by section 104 or rule 1 of Order 43, or an order in any case, against which an appeal is allowed by law, shall, if a party applies for a copy of formal order or the Court so directs, draw up a formal order embodying its adjudication and the memorandum of costs incurred by the parties."-(3-10-1981).

## **8. Procedure where Judge has vacated office before signing decree. -**

Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

## **9. Decree for recovery of immovable property. -**

Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

## **10. Decree for delivery of movable property. -**

Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

## **11. Decree may direct payment by instalments. -**

(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason [incorporate in the decree after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977).] payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable. (2) Order, after decree, for payment by instalments. - After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Madhya Pradesh].-Substitute "and after notice to the decree-holder" for "and with the consent of the decree-holder" occurring in sub-rule (2).-(16-9-1960).[Madras].-Substitute the following for rule 11:"11. Decree may direct payment by instalments.-(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that the payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which money is payable.(2) After the passing of any such decree, the Court may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks

fit".[Orissa].-Same as that of Madhya Pradesh-(7-5-1954).

## **12. Decree for possession and mesne profits. -**

(1)Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-(a)for the possession of the property;(b)[ for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent; [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for cl. (b) (w.e.f. 1.2. 1977).](ba)for the mesne profits or directing an inquiry as to mesne profits;](c)directing an inquiry as to rent or mesne profits from the institution of the suit until-(i)the delivery of possession to the decree-holder,(ii)the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or(iii)the expiration of three years from the date of the decree, whichever event first occurs.(2)Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].In Order XX, for the existing rule 12 and its marginal note, substitute the following as rule 12 and marginal note:"12. Decree for possession and mesne profits.-(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree(a) for the possession of the property;(b) for the rent or mesne profits which have accrued on the property during the period prior to the institution of the suit, or directing an enquiry as to such rent or mesne profits;until(c) directing an inquiry as to rent or mesne profits from the institution of the suit(i) the delivery of possession to the decree-holder, or(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court.(2) Where an inquiry is directed under clause (b) or clause (c) or sub-rule (1) above, a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."-(1-10-1983).[Karnataka].-Same as that of Madras except that for the words "the final decree" the words "a final decree" are substituted.-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Add the following to Order 20, rule 12: "(3) Where an Appellate Court directs such an inquiry, it may direct the Court of first instance to make the inquiry, and in every case the Court of first instance may of its own accord, and shall whenever moved to do so by the decree-holder inquire and pass the final decree."

## **12A. [Decree for specific performance of contract for the sale or lease of immovable property.-**

Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by te purchaser or lessee, it shall specify the period within which the payment shall be made.][Inserted by the Code of Civil Procedure (Amendment)d Act, 1976, Section 70 (w.e.f. 1.2.1977).]

### **13. Decree in administration suit. -**

(1)Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.(2)In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit, is pending with respect to the estates of persons adjudged or declared insolvent, and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

### **14. Decree in pre-emption suit. -**

(1)Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall-(a)specify a day on or before which the purchase-money shall be so paid, and(b)direct that on payment into Court of such purchase-money, together with the costs (if any) decrees against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.(2)Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,-(a)if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would but for such default, have taken effect; and(b)if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emption shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

High Court Amendments-[Bombay].-In Order XX, rule 14, substitute a colon for the full stop appearing at the end of clause (b) of sub-rule (1) and add thereafter the following proviso:"Provided that if there are crops standing on the property, possession of the property shall not be delivered to the plaintiff until such crops have been reaped. The plaintiff shall, however, be entitled to simple interest not exceeding 6 per cent. per annum at the discretion of the Court on the amount deposited by him in Court in respect of the period between the date of payment into Court by him of the purchase money and the costs (if any) and the date on which delivery of possession to him by the defendant takes place."-(1-10-1983).[Karnataka].-Add the following proviso to rule 14(1)(b):"Provided that if there are crops standing on the property, the Court may postpone the delivery of property to the plaintiff till after the crops have been reaped and direct that the plaintiff be paid by the defendant simple interest at such rate as may be fixed not exceeding 6 per cent. per



annum on the amount deposited by the plaintiff in Court in respect of the period between the date of deposit into Court of the purchase money and costs, if any, and the date to which delivery of possession has been postponed."-(R.O.C. No. 2526/1959, dated 9-2-1967).

### **15. Decree in suit for dissolution of partnership. -**

Where a suit is for the dissolution of partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

### **16. Decree in suit for account between principal and agent. -**

In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not herein before provided for, 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 preliminary decree directing such accounts to be taken as it thinks fit.

### **17. Special directions as to accounts. -**

The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

### **18. Decree in suit for partition of property or separate possession of a share therein. -**

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-(1)if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;(2)if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required.

High Court Amendment-[Kerala]:For rule 18, the following rule shall be substituted, namely:"18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the

property and giving such further directions as may be required. "(9-6-1959).

## **19. Decree when set-off or counter-claims is allowed. -**

(1)Where the defendant has been allowed a set-off [or counter-claim] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 70 (w.e.f. 1.2.1977).] against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.(2)Appeal from decree relating to set-off or counter-claim.-Any decree passed in a suit in which a set-off [or counter-claim] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 70 (w.e.f. 1.2.1977).] is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if not set-off [or counter-claim] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 70 (w.e.f. 1.2.1977).] had been claimed.(3)The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

High Court Amendment-[Allahabad].-In sub-rule (1), substitute a comma for the full stop at the end; and add the following:"but no decree shall be passed against the plaintiff unless the claim to set-off was within limitation on the date on which the written statement was presented."-(21-3-1936).

## **20. Certified copies of judgment and decree to be furnished. -**

Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

High Court Amendments-[Bombay].-In Order XX, for the existing rule 20 and its marginal note, substitute the following as rule 20 and marginal note:"20. Certified copies of judgment and decree to be furnished.-(1) Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.(2) The application may be made by the party himself or by his recognised agent or by his pleader and may also be sent by post. Whenever such application is sent by post the same shall be sent by registered post pre-paid for acknowledgment. When the application is sent by post, it shall be deemed to have been made on the date of posting if the application is made by registered post, but only on the date of its receipt by the office of the Court in case when it is sent by post other than registered post."-(1-10-1983).[Madhya Pradesh].-Substitute the following for rule 20:"20. Certified copies of judgment and decree shall be furnished to the parties on application, and at their expense.-Applications for copies may be presented in person or by an agent or a pleader or sent by post to the head copyist of the office at the place where the record from which the copies are applied for, will eventually be deposited for safe custody. When copies from a record in the temporary custody of a Court at a station where there is no record room are required, applications may be presented in person or by an agent or a pleader to the Senior Judge at that station:Provided that the Judge shall neither comply with applications received by post nor send copies by post."-(16-9-1960).Order 20, Rule 21High Court Amendment-[Allahabad].-Add the following to Order 20, rule 21:"21. (1) Every decree and order as defined in section 2, other than a decree or order of a Court of Small Causes or of a Court in the exercise of the jurisdiction of a Court of Small Causes, shall be drawn up in the Court vernacular, or

in English, if the Court so orders. As soon as such decree or order has been drawn up, and before it is signed, the Munsarim shall cause a notice to be pasted on the notice board stating that the decree or order has been drawn up, and that any party or the pleader of any party may, within six working days from the date of such notice, peruse the draft decree or order and may sign it, or may file with the Munsarim an objection to it on the ground that there is in the judgment a verbal error or some accidental defect not affecting a material part of the case, or that such decree or order is at variance with the judgment or contains some clerical or arithmetical error. Such objection shall state clearly, what is the error, defect or variance alleged, and shall be signed and dated by the person making it.-(22-5-1915 and 1-11-1941).(2) If any such objection be filed on or before the date specified in the notice, the Munsarim shall enter the case in the earliest weekly list practicable, and shall, on the date fixed, put up the objection together with the record before the Judge who pronounced the judgment, or, if such Judge has ceased to be the Judge of the Court, before the Judge then presiding.-(22-5-1915).(3) If no objection has been filed on or before the date specified in the notice, or if an objection has been filed and disallowed, the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8.-(22-5-1915).(4) If an objection has been duly filed and has been allowed, the correction or alteration directed by the Judge shall be made. Every such correction or alteration in the judgment shall be made by the Judge in his own handwriting. A decree amended in accordance with the correction or alteration directed by the Judge shall be drawn up, and the Munsarim shall date the decree as of the day on which the judgment was pronounced -and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8.-(22-5-1915).(5) When the Judge signs the decree, he shall make an autograph note stating the date-on which the decree was signed."-(22-5-1915).

## ORDER XX-A

[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 71 (w.e.f. 1.2.1977).]**Cost**

### 1. Provisions relating to certain items. -

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of,-(a)expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;(b)expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;(c)expenditure incurred on the typing, writing or printing of pleadings filed by any party;(d)charges paid by a party for inspection of the records of the Court for the purposes of the suit;(e)expenditure incurred by a party for producing witnesses, even though not summoned through Court, and(f)in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

High Court Amendment-[Madras].-In Order 20-A, in rule 1, after the entry (f), add following entry:"(g) In the matter of preparation of pleadings or affidavits for being presented in Court, charges be fixed at 75 paise for every page and 25 paise for every page for the original and copy, respectively."-(7-5-1986).

## **2. Costs to be awarded in accordance with the rules made by High Court. -**

The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.]

## **Order – XXI**

### **Execution of Decrees and OrdersPayment under Decree**

#### **1. 1. Modes of paying money under decree.—**

(1)All money, payable under a decree shall be paid as follows, namely:—(a)by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or(b)out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or(c)otherwise, as the Court which made the decree, directs.(2)Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.(3)Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—(a)the number of the original suit;(b)the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;(c)how the money remitted is to be adjusted, that is to say, whether it is towards the principal,interest or costs;(d)the number of the execution case of the Court, where such case is pending; and(e)the name and address of the payer.(4)On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).(5)On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from thedate of such payment:Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

High Court Amendment-[Orissa].-In Order 21, rule 1, insert the words or order" after the word "decree", wherever they occur.-(14-5-1984).

#### **2. Payment out of Court to decree-holder. -**

(1)Where any money payable under a decree of any kind is paid out of Court. [or decree of any kind is otherwise adjusted] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977).] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.(2)The judgment-debtor [or any person

who has become surety for the judgment-debtor] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decreeholder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court record the same accordingly.(2A)[ No payment or adjustment shall be recorded at the instance of the judgment-debtor unless. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-(a)the payment is made in the manner provided in rule 1; or(b)the payment or adjustment is proved by documentary evidence; or(c)the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, on before the Court.](3)[ A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.] [In the application of the Act, to Punjab, sub.rule (3) has been repealed by the Punjab Relief of Indebtedness Act, 1934 (Pun. 7 of 1934).]

High Court Amendments-[Bombay].-In Order XXI, for the existing sub-rule (2) of rule 2, substitute the following:"(2) The judgment-debtor or any person who has become surety for judgment-debtor may also inform the Court by an application in writing supported by an affidavit of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause on a date to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly."-(1-10-1983).[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Orissa].-Same as that of Patna.[Patna].-(i) In sub-rule (2) for the words "and if, after service of such notice", substitute the following:-"and where certification has been made by an endorsement of such payment or adjustment by the decree-holder or by any person authorised by him in that behalf upon the process issued by the Court, the Court shall issue such notice of its own motion. If after service of the notice";(ii) Delete the existing sub-rule (3) of rule 2.-(-5-4-1961).[Punjab].-Omit sub-rule (3).

### **Courts Executing Decrees**

### **3. Lands situate in more than one jurisdiction. -**

Where immovable property forms one estate or tenure situate within the local limits of jurisdiction of two or more Court, any one of such Courts may attach and sell the entire estate or tenure.

### **4. Transfer to Court of Small Causes. -**

Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras [or Bombay] [Substituted by A.O. 1937, for " Bombay or Rangoon" .], such Court may send to the Court of Small Causes in Calcutta, Madras [or Bombay] [Substituted by A.O. 1937, for " Bombay or Rangoon" .], as the case

may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

High Court Amendments-[Bombay].-In Order XXI, for the existing rule 4 and its marginal note, substitute the following as rule 4 and marginal note:"4. Transfer to Court of Small Causes.-(1) Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards, its subject-matter, is not expected by the law for the time being in force from the cognizance of either a Presidency or a Provincial Small Causes Court and the Court which passed it wishes it to be executed in Calcutta or Madras, such Court may send to the Court of Small Causes in Calcutta or Madras, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.(2) A decree in a suit of the nature described in sub-rule (1) but in which the value as set forth in the plaint did not exceed ten thousand rupees may be sent for execution to and be executed by the Presidency Court of Small Causes at Bombay in the manner prescribed in sub-rule (1)."(1-10-1983).[Gujarat].-Same as that of Bombay except in sub-rule (2) for "ten thousand" substitute "three thousand".-(17-8-1961).

## **5. [Mode of transfer. -**

Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 5 (w.e.f. 1.2.1977).]

## **6. Procedure where Court desires that its own decree shall be executed by another Court. -**

The Court sending a decree for execution shall send-(a)a copy of the decree;(b)a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and(c)a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

High Court Amendments-[Allahabad].-Rule 6 to be re-numbered as rule 6(1) and the following sub-rule (2) to be added:"(2) Such copies and certificates may, at the request of the decree-holder, be handed over to him or to such person as he appoints, in a sealed cover to be taken to the Court to which they are to be sent."-(24-7-1926).[Karnataka].-For modification of the Rule in relation to Small Cause Court, Mysore, see Mysore Small Cause Courts Act, 1964 (Mys. Act 11 of 1964).[Orissa].-Same as that of Patna.[Patna].-In rule 6, insert the following words after the word "decree" in clause (a):-"and a copy of the suit register relating to the suit in which the decree was passed and a memorandum showing the costs allowed to the decree-holder subsequent to the passing of the decree."Order 21, Rule 6-A[Madras].-After rule 6, the following rule shall be inserted:"Rule 6-A.-A copy of the judgment bearing the formulae executoire, sent by a Court in the

Union Territory of Pondicherry, shall be deemed to be a decree and to comply with the requirements of rule 6: Provided that notwithstanding anything contained in rule 2, where any question as to the satisfaction of (or) the discharge, in whole or in part, of such a decree arises, the Court executing the decree shall decide it."-(15-3-1967).

### **7. Court receiving copies of decree, etc. to file same without proof. -**

The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

### **8. Execution of decree or order by Court to which it is sent. -**

Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such or be transferred for execution to any subordinate Court of competent jurisdiction.

### **9. Execution of High Court of decree transferred by other Court. -**

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in exercise of its ordinary original civil jurisdiction.

### **Application For Execution**

### **10. Application for execution. -**

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

High Court Amendment-(Kerala).-Rule 9 shall be omitted.-(9-6-1959).High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Punjab].-Add the following proviso to rule 10:"Provided that if the judgment-debtor has left the jurisdiction of the Court which passed the decree, or of the Court to which the decree has been sent, the holder of the decree may apply to the Court within whose jurisdiction the judgment-debtor is, or to the officer appointed in this behalf, to order immediate execution on the production of the decree and of an affidavit of non-satisfaction by the holder of the decree pending the receipt of an order of transfer under section 39."

### **11. Oral application. -**

(1)Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.(2)Written application.-Save as otherwise provided by sub-rule(1), every application for the

execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely-(a)the number of the suit;(b)the names of the parties;(c)the date of the decree;(d)whether any appeal has been preferred from the decree;(e)whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;(f)whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;(g)the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;(h)the amount of the costs (if any) awarded;(i)the name of the person against whom execution of the decree is sought; and(j)the mode in which the assistance of the Court is required whether-(i)by the delivery of any property specifically decreed;(ii)[ by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for sub.clause (ii) (w.e.f. 1.2. 1977).](iii)by the arrest and detention in prison of any person;(iv)by the appointment of a receiver;(v)otherwise, as the nature of the relief granted may require.(3)The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

High Court Amendments-[Allahabad].-(1) Substitute for clause (f) of sub-rule (2):-"(f) The date of the last application, if any" andAdd the following proviso to sub-rule (2):"Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application."-(24-7-1926).(3) Add the following as sub-rule (4):"Where a decree for money is sought to be executed under sub-rule (2) by the arrest and detention in prison of the judgment-debtor, the application shall also state on which of the grounds mentioned in the proviso to section 51, detention is claimed."-(19-5-1956).[Andhra Pradesh].-Same as that of Madras.[Karnataka].-(1) In rule 11, sub-rule (2), insert the following as clause (ff) after clause (f) and before clause (g):"(ff) whether the decree-holder has transferred any part of his interest in the decree and, if so, the date of the transfer and the names and addresses of the parties to the transfer;"(2) At the end of clause (j) of sub-rule (2) of rule 11, add the following:"In an execution petition praying for relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this Order, there shall not be included any other relief mentioned in this clause."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In rule 11, in sub-rule (2):(i) after clause o, the following clause shall be inserted, namely:"(ff) whether the original decree-holder has transferred any part of his interest in the decree, and if so, the date of the transfer and the name and address of the parties to the transfer."(ii) for clause (~), the following shall be substituted, namely:"(j) the mode in which the assistance of the Court is required, whether-(i) by the delivery of any property, specifically decreed;(ii) by the attachment and sale, or by the sale without attachment, of anyproperty;(iii) by the arrest and detention in prison of any person;(iv) by the appointment of a receiver;(v) otherwise, as the nature of the relief granted may require.In an execution petition praying for relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this Order, there shall not be included any other relief mentioned in this clause."-(9-6-1959).[Madhya Pradesh].-After sub-clause (v) of clause (j) of sub-rule (2) of rule 11, insert the following proviso:"Provided that, when the applicant files with his application a certified



copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application."-(16-9-1960).[Madras].-(a) Insert the following new clause:"(a) whether the original decree-holder has transferred any part-of his interest in the decree, and if so, the date of the transfer and the name and address of the parties to the transfer."(b) Add the following to sub-rule (2) (j):"In an execution petition praying for relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this Order, there shall not be included any other relief mentioned in this clause."(c) Add the following proviso at the end of sub-rule (2):"Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application."[Patna].(a) Add the following as sub-rule (1-A) of rule 11:"(1-A) Where an order has been made under section 39 for the transfer of a decree for the payment of money for execution to a Court, within the local limits of the jurisdiction of which the judgment-debtor resides, such Court may, on the production by the decree-holder of a certified copy of the decree and an affidavit of non-satisfaction, forthwith order immediate execution of the decree by the arrest of the judgment-debtor."(b) Substitute the words and figures "sub-rules (1).and (1-A)" for the words and figure "sub-rule (1)" in line 1 of sub-rule (2) of rule 11.(c) Delete clauses (a), (b), (c), (d), (/) and (h) of sub-rule (2) of rule 11.-(5-4-1961).

### **11A. . [Application for arrest to state grounds.-**

Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

### **12. Application for attachment of movable property not in judgment-debtor's possession. -**

Where an application is made for the attachment of any movable property belonging to a judgment-debtor in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

### **13. Application for attachment of immovable property to contain certain particulars. -**

Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot-(a)a description such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and(b)a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

### **14. Power to require certified extract from Collector's register in certain cases. -**

Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

High Court Amendment-[Kerala].-(i) In rule 14, for the marginal note the following shall be substituted:"Power to require certified extracts from the Registers of Revenue Accounts".(ii) For the words "in the office of the Collector" in the rule, the words "in the Revenue Accounts "shall be substituted.-(9-5-1959).

### **15. Application for execution by joint decree-holders. -**

(1)Where a decree has been passed jointly in favour of more persons than one, any one or more such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where of them has died, for the benefit of the survivors and the legal representatives of the deceased.(2)Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.

### **16. Application for execution by transferee of decree. -**

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :Provided also that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.[Explanation.-Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.][ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2. 1977).]

High Court Amendments-[Bombay].-In Order XXI, for the existing rule 16 and its marginal note, substitute the following as rule 16 and marginal note:"16. Application for execution by transferee of decree.-Where a decree or if a decree has been passed jointly in favour of two or more persons the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, or to the Court to which it has been sent for execution, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:Provided that, where the decree or such interest as aforesaid, has been transferred by assignment, notice of

such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution: Provided further that where the transferee Court holds the assignment proved, it shall forthwith communicate its decision in that behalf to the Court which passed the decree, and the latter Court shall make an entry in the Register of Suits indicating that the assignment has been held to be proved: Provided also that, where the decree for the payment of money against two or more persons has been transferred to one of them it shall not be executed against the others. Explanation I.- In an application under this rule, any payment of money made under a decree, or any adjustment in whole or in part of the decree arrived at to the satisfaction of the decree-holder, which payment or adjustment has not been certified or recorded by the Court under rule 2 of this Order, shall not be recognised by the Court entertaining the application. Explanation II.- Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule."-(1-10-1983). [Calcutta].-In the first proviso to rule 16, cancel the words "and the decree shall not be executed until the Court has heard their objections (if any) to its execution" and substitute therefor the following words: "and until the Court has heard their objections (if any) the decree shall not be executed provided that if, with the application for execution, an affidavit by the transferor admitting the transfer or an instrument of transfer duly registered be filed, the Court may proceed with the execution of the decree pending the hearing of such objections." [Delhi].-Same as that of Punjab. [Gauhati].-Same as that of Calcutta. [Himachal Pradesh].-Same as that of Punjab. [Madhya Pradesh].-In rule 16, after the words "which passed it", insert the words "or to any Court to which it has been sent for execution".-(16-9-1960). [Orissa].-Same as that of Patna-(26-7-1958). [Patna].-In rule 16(1) Add the words "or to the Court to which the decree has been sent for execution, as the case may be" after the words "to the Court which passed it"; (2) Delete the words "and the judgment-debtor" from the first proviso and in the second proviso after the word "transferor" insert the words "unless an affidavit of the transferor admitting the transfer is filed with the application" and substitute the word "his" for the word "their" and the word "objection" for the word "objections". [Punjab, Haryana and Chandigarh].-In the first proviso the words "and the judgment-debtor" which were deleted are reinstated and the word "their" is substituted for the word "his"; the first proviso as now it stands is the same as that in the Central Code.

## **17. Procedure on receiving application for execution of decree. -**

(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and if, they have not been complied with, [the Court shall allow] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).] the defect to be remedied then and there or within a time to be fixed by it. (1A) [If the defect is not so remedied, the Court shall reject the application: Provided that where, in the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words

(w.e.f. 1.2.1977).](2)Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.(3)Every amendment made under this rule shall be signed or initialled by the Judge.(4)When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-Between the words "been complied with" and "the Court may", insert the words "and if the decree-holder fails to remedy the defect within a time to be fixed by the Court".-(24-7-1926).[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Cancel the words "the Court may reject the application or may allow the defect to be remedied then and there, or within a time to be fixed by it" and substitute therefor the following words:"the Court shall allow the defect to be remedied then and there, or within a time to be fixed by it. If the defect is not remedied within the time fixed, the Court may reject the application."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In sub-rule (1), for the words "or may allow the defect to be remedied then and there or", substitute the words "if the defect is not remedied."-(9-6-1959).[Madhya Pradesh].-In sub-rule (1), substitute "the Court may allow the defect to be remedied then and there, or may fix a time within which it should be remedied and, in case the decree-holder fails to remedy the defect within such time the Court may reject the application", for "the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it."-(16-9-1960).[Madras].-(1) In sub-rule (1) for the words "or may allow the defect to be remedied then and there or", substitute the words "if the defect is not remedied".(2) Add the following proviso at the end of the rule:"Provided that where an execution application is returned on account of inaccuracy in the particulars required under rule 11(2)(g), the endorsement of return shall state what in the opinion of the returning officer is the correct amount."-(13-10-1936).[Patna].-In rule 17(1) substitute the following for the words "the Court may reject the application, etc." at the end of the sub-rule:"The Court shall allow the defect to be remedied then and there or within a time to be fixed by it, and, if the decree-holder fails to remedy the defect within such time, the Court may reject the application."[Punjab].-For the words "the Court may reject... to be fixed by it" in sub-rule (1) substitute the following words:"the Court shall fix a time within which the defect shall be remedied, and if it is not remedied within such time, the Court may reject the application."-(1-11-1966).Order 21, Rule 17-A High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Same as that of Madras except for the omission of the words "or order" in both the places where they occur.-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras.[Madras].-Add the following after rule 17 (4):"17-A. Where an application is made to a Court for the execution of a decree or order passed against defendant in respect of whom service of summons has been dispensed with under rule 31 of Order 5, the Court shall ordinarily direct stay of the execution of the decree or order against such defendant till the expiry of a period of one year after cessation of hostilities with the State in whose territory such defendant was resident:Provided that the Court may, if it considers

that the interests of justice so require order execution on such terms as to security or otherwise as it thinks fit."-(29-3-1945).

## **18. Execution in case of cross-decrees. -**

(1)Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then-(a)if the two sums are equal, satisfaction shall be entered upon both decrees; and(b)if the two sums are unequal execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.(2)This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.(3)This rule shall not be deemed to apply unless-(a)the decree holder in one of the suits which the decrees have been made is the judgment-debtor in the other and each party files the same character in both suits; and(b)the sums due under the decrees are definite.(4)The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree against him singly in favour of one or more of such persons.Illustrations(a)A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.(b)A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtain a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.(c)A obtains a decree against B for Rs. 1,000 C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000 B cannot treat C's decree as a cross-decree under this rule.(d)A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 1,000 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as cross-decree under this rule.

High Court Amendment-[Madhya Pradesh].-Substitute the following for the existing rule 18:"18. (1) Where decree-holders apply to a Court for execution of cross-decrees in separate suits between the same parties for the payment of two sums of money passed and capable of execution at the same time by such Court, then(a) if the two sums are equal, satisfaction shall be entered upon both decrees;(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on decree for the smaller sum:Provided that(i) each party fills the same character in both suits, and(ii) the sums due under the decree are definite.(2) This rule shall be deemed to apply where either applicant is an assignee of one of the decrees as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself:Provided that(i) where the decrees were passed between the same parties, each party fills the same character in each suit; and(ii) where the decrees were not passed between the same parties, the decree-holder in one of the suits is the judgment-debtor in the other suit and fills the same character in both suits; and(iii) the sums due under the decrees are definite.(3) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed

against him singly in favour of one or more of such persons."-(16-9-1960).

## **19. Execution in case of cross-claims under same decree. -**

Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then-(a)if the two sums are equal, satisfaction for both shall be entered upon the decree; and(b)if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

## **20. Cross-decrees and cross-claims in mortgage-suits. -**

The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

## **21. Simultaneous execution. -**

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

## **22. Notice to show cause against execution in certain cases. -**

(1)Where an application for execution is made,-(a)more than [two years] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for " one year" (w.e.f. 1.2.1977).] after the date of the decree, or(b)against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, [or] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](c)[ against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :Provided that no such notice shall be necessary in consequence of more than [two years] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " one year" (w.e.f. 1.2.1977)Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " one year" (w.e.f. 1.2.1977).] having elapsed between the date of the decree and the application for execution if the application is made within [two years] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " one year" (w.e.f. 1.2.1977).] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.(2)Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

High Court Amendments-[Allahabad].-(i) Omit clause (a) of sub-rule (1) and delete the words beginning from "in consequence of more than one year" to "made on any previous application for execution, or" from the proviso.(ii) Omit the letter and the brackets "(b)".-(1-6-1957).(iii) To sub-rule (2) of this rule, add the following proviso:"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained substantial injury by reason of such omission."-(24-7-1926).[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Add the following as sub-rule (3) to rule 22, Order 21: "(3) Omission to issue a notice in a case where notice is required under sub-rule (1), or to record reasons in a case where notice is dispensed with under sub-rule (2), shall not affect the jurisdiction of the Court in executing the decree." [Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-For "one year", substitute "two years" wherever they occur.-(17-8-1.961).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 22 and substitute the following: "-22. (1) Where an application for execution is made (a) more than two years after the date of the decree, or (b) against the legal representative of a party to the decree, or (c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in Insolvency, or (d) for the execution of a decree filed under the provisions of section 44-A of this Code, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him: Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution, if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him. (2) Where from the particulars mentioned in the application in compliance with rule 11(2) (ff) of this Order or otherwise the Court has information that the decree-holder has transferred any part of his interest in the decree, the Court shall issue notice of the application to all parties to such transfer, other than the petitioner, where he is a party to the transfer. (3) Nothing in the foregoing sub-rules shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice hereby prescribed, if for reasons to be recorded in writing the Court considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice: Provided that no order for the execution of a decree shall be invalid owing to the omission of the Court to issue a notice as required by sub-rule (1) or to record its reasons where notice is dispensed with under sub-rule (3), unless the judgment-debtor has sustained substantial injury as a result of such omission."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-To sub-rule (2), add the following proviso: "Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained substantial injury by reason of such omission."-(16-9-1960).[Madras].-For rule 22, the following rule shall be substituted, namely: "-22. Notice to show cause against execution in certain cases.-(1) Where an application for execution is made (a) more than (two years) after the date of the decree; or (b) against the legal representative of a party to the decree (or where an application is made for execution of a decree filed under the provisions of section 44-A); or (c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in Insolvency, the Court executing the

decree shall issue a notice to the person against whom execution is applied for, requiring him to show cause, on a date to be fixed, why the decree should not be executed against him: Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution, if the application is made within two years, from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him. (1-A) Where from the particulars mentioned in the application in compliance with rule 11 (2) (ff) supra or otherwise the Court has information that the original decree-holder has transferred any part of his interest in the decree, the Court shall issue notice of the application to all parties to such transfer, other than the petitioner, where he is a party to the transfer. (2) Nothing in sub-rule (1) shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice: Provided that no order for execution of a decree shall be invalid owing to the omission of the Court to record its reasons unless the judgment-debtor has sustained, substantial injury as a result of such omission." - (5-9-1968). [Orissa]. - Same as that of Patna. [Patna]. - For sub-rule (1) of rule 22, substitute the following sub-rule: "Where an application for execution is made in writing under rule 11(2), the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him." Add the following as sub-rule (3): "(3) Proceedings held in execution of decree shall not be invalid solely by reason of any omission to issue or failure to serve a notice under sub-rule (1) or to record reasons where such notice is dispensed with under sub-rule (2) unless the judgment-debtor has sustained injury, thereby." - (9-5-1947). [Punjab and Haryana]. - In rule 22, the words "two years" shall be substituted for the words "one year" wherever they occur. Add the following proviso at the end of the rule: "Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction."

## **22A. . [Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale. -**

Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **23. Procedure after issue of notice. -**

(1) Where the person to whom notice is issued under [rule 22] [Substituted by Act No. 38 of 1978, for " the last preceding rule" .] does not appear or does not show cause to the satisfaction of the Court



why the decree should not be executed the Court shall order the decree to be executed.(2)Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.**Process For Execution**

## **24. Process for execution. -**

(1)When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.(2)Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.(3)[In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 Section 72, for sub.rule (3) (w.e.f. 1.2.1977).]

High Court Amendments-[Andhra Pradesh].-Substitute the following for sub-rule (3):"(3) In every such process, a day shall be specified on or before which it shall be executed and a day shall be specified on or before which it shall be returned to Court."[Bombay].-In Order XXI, for rule 24, substitute the following:"24. Process for execution.-(1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree..(2) Every such process shall bear date, the day on which it is issued and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed:Provided that a Civil Judge, Senior Division, may, in his special jurisdiction, send the process to another Court in the same district for execution by the proper officer in that Court.(3) In every such process a day shall be specified on or before which it shall be executed and day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void, if no day for its return is specified therein."-(1-10-1983).[Gujarat].-The following proviso be added to rule 24(2):"Provided that a Civil Judge, Senior Division, may, in exercise of his special jurisdiction, send a process to another subordinate Court in the same district for execution by the proper officer in that Court."-(17-8-1961).

## **25. Endorsement on process. -**

(1)The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it is executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.(2)Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

High Court Amendments-[Allahabad].-In sub-rule (2), for the words "shall examine him",

substitute the words "may examine him personally or upon affidavit".-(7-9-1918).[Andhra Pradesh].-Same as that of Madras.[Bombay].-In rule 25, substitute a colon for the full stop appearing at the end of sub-rule (2) and add thereafter the following proviso:"Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this rule."-(1-10-1983).[Gujarat].-Same as that of Bombay but without the words "or the Deputy Nazir".-(17-8-1961).[Karnataka].-(1) Substitute the following for sub-rule (2):"(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court may on its own motion and shall upon an application by the petitioner in the execution application examine the officer touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability and shall record the result. Such examination of the process server as well as of witnesses summoned under this rule shall be made after notice to the petitioner in execution application or his pleader."(2) Add the following as sub-rule (3):"(3) Where in the case of a decree for the payment of money the process is not executed owing to the decree having been satisfied, such officer shall also obtain an endorsement on the process to that effect signed by the decree-holder and attested by two respectable witnesses who can identify the decree-holder. On receipt of the process with an endorsement so signed and attested, the Court shall issue notice to the decree-holder to show cause, on a day to be fixed by the Court, why such satisfaction should not be recorded as certified and if after service of such notice the decree-holder fails to show such cause the Court shall record the same accordingly. A record of satisfaction under the provisions of this sub-rule shall have the same effect as one made under the provisions of sub-rule (2) of rule 2 of this Order."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-(1) Substitute the following for sub-rule (2):"(2) Where in the case of a decree for the payment of money the process is not executed owing to the decree having been satisfied, such officer shall also obtain an endorsement on the process to that effect signed by the decree-holder and attested by two respectable witnesses who can identify the decree-holder."(2) Add the following as sub-rule (3):"(3) Where the endorsement of such officer is to the effect that he is unable to execute the process, the Court shall examine him or cause him to be examined by, any other Court, touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result:Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause.Where the inability to execute the process is stated to be due to the satisfaction of the decree and such satisfaction has been endorsed on the process as mentioned in sub-rule (2) above, the Court shall issue notice to the decree-holder to show cause on a day to be fixed by the Court, why such satisfaction should not be recorded as certified, and if after service of such notice the decree-holder fails to show cause why the satisfaction should not be recorded as certified the Court shall record the same accordingly.A record of satisfaction under the provisions of this sub-rule shall have the same effect as one under the provisions of Order 21, rule 2, sub-rule (2)."

### **Stay Of Execution**

## **26. When Court may stay execution. -**

(1) the Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto. (2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application. (3) Power to require security from, or impose conditions upon, judgment-debtor—Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, [the Court shall require] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for "the Court may require" (w.e.f. 1.2.1977).] such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

High Court Amendments—[Allahabad].—For "may" in sub-rule (3), read "shall, unless good cause to the contrary is shown".—(24-7-1926). [Calcutta].—In sub-rule (3), rule 26, Order 21, cancel the words "the Court may require such security from, or impose such conditions upon the judgment-debtor as it thinks fit", and substitute therefor the following words: "the Court shall require security from the judgment-debtor unless sufficient cause is shown to the contrary". [Delhi].—Same as that of Punjab. [Gauhati].—Same as that of Calcutta. [Himachal Pradesh].—Same as that of Punjab. [Madhya Pradesh].—Same as that of Allahabad—(16-9-1960). [Patna].—In sub-rule (3), for the words "the Court may", substitute the words "the Court shall, unless sufficient cause is shown to the contrary". [Punjab].—Same as that of Patna.

## **27. Liability of judgment-debtor discharged. -**

No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

## **28. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to. -**

Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

## **29. Stay of execution pending suit between decree-holder and judgment-debtor. -**

Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court] [Inserted by the Code of Civil Procedure (Amendment) Act,

1976, Section 72 (w.e.f. 1.2.1977).], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-(i) Insert the words "or any person whose interests are affected by the decree, or by any order made in execution thereof" after the words "was passed" and before the words "the Court may".(ii) Delete the words "on such terms as to security or otherwise" occurring in the rule;(iii) Substitute "if" for "as" before "it thinks fit"; and(iv) Add the following as proviso"Provided that in all cases where execution of the decree is stayed under this rule the Court shall require the person seeking such stay to furnish such security as it may deem fit."-(1-6-1957).[Karnataka].-Delete rule 29 and substitute the following:"29. Where a suit is pending in any Court against the holder of a decree of such Court instituted by the person against whom the said decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay the execution of the decree until the pending suit has been decided."-(R.O.C. No. 2526/1959, dated 9-2-1967).

## **Mode Of Execution**

### **30. Decree for payment of money. -**

Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

High Court Amendments-[Allahabad].-In sub-rules (2) and (3), wherever the words "six months" occur, substitute "three months or such extended time as the Court may, for good cause direct".-(24-7-1926).

### **31. Decree for specific movable property. -**

(1)Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.(2)Where any attachment under sub-rule (1) has remained in force for [three months] [Subs by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " six months" (w.e.f. 1.2.1977).] if the judgmentdebtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.(3)Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [three months] [Subs by the Code of Civil

Procedure (Amendment) Act, 1976, Section 72 for " Six month" (w.e.f. 1.2.1977).] from the date of attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

[Andhra Pradesh].-Same as that of Madras.[Calcutta].-In Order 21, sub-rules (2) and (3), substitute the words "three months" for the words "six months".[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Same as that of Madras.[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-In sub-rules (2) and (3) of rule 31, for the words "six months" wherever they occur, substitute the words "three months or such further time as the Court may, in any special case, for good cause shown, direct".-(16-9-1960).[Madras].-In rule 31:(i) in sub-rules (2) and (3), for the words "six months", the words "three months" shall be substituted.(ii) after sub-rule (3), the following sub-rule shall be inserted, namely: "(4) The Court may on application extend the period of three months mentioned in sub-rules (2) and (3) to such period not exceeding six months on the whole as it may think fit." [Orissa].-Same as that of Patna.[Patna].-In sub-rules (2) and (3) of rule 31, for the words "six months", substitute "three months", and add the following as sub-rule (4): "(4) The Court may, for sufficient cause, extend the period of three months mentioned in sub-rules (2) and (3) to such period, not exceeding six months on the whole, as it may think fit." [Punjab and Haryana].-(i) In sub-rule (2), for the word "six" substitute the word "three".(ii) Add the following proviso after sub-rule (2): "Provided that the Court may, in any special case, according to the special circumstances thereof, extend the period beyond three months; but it shall in no case exceed six months in all".(iii) In sub-rule (3), for the words "six months" substitute the following words: "three months or such other period as may have been prescribed by the Court".

## **32. Decree for specific performance for restitution of conjugal rights, or for an injunction. -**

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.(2) Where the party against whom a decree for specific performance or for an injunctions been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for [six months] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " one year" (w.e.f. 1.2.1977).] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation s it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or here, at the end of [six months] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for " one year" (w.e.f. 1.2.1977).] from the date of the attachment, no application to have the property sold has

been made, or if made has been refused, the attachment shall cease.(5)Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.[Explanation.-For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunction.] [Inserted by the Code of Civil Procedure (Amendment) Act, 2002, Section 14 (w.e.f. 1.7.2002).]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-In rule 32:(a) in sub rule (3)(i) for the words "one year" substitute the words "three months";(ii) after the word "application" insert the words "and the Court may also, for good cause shown, extend the time for the attachment remaining in force for a period not exceeding one year"; and(b) in sub-rule (4), for the words "one year" substitute the words "three months or such further time as may have been fixed by the Court under sub-rule (3)".-(16-9-1960).[Madras].-Substitute the following for sub-rules (3) and (4):"(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application. The Court may, on application, extend the period of three months mentioned herein to such period not exceeding one year on the whole as it may think fit.(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing it which he is bound to pay, or where, at the end of three months from the date of the attachment or of such extended period which the Court may order under sub-rule (3), no application to have the property sold has been made or if made has been refused, the attachment shall cease."[Patna].-In sub-rule (3), for the words "one year", substitute "for three months or for such further period not exceeding one year in the whole as may on sufficient cause shown be fixed by the Court."[Punjab and Haryana].-In sub-rule (3), for the words "one year" substitute the words "three months", and add the following proviso to sub-rule (3):"Provided that the Court may for sufficient reasons, on the application of the judgment-debtor, extend the period beyond three months; but it shall in no case exceed one year in all."-(11-11-1966).In sub-rule (4), for the words "one year" substitute the words "three months or such other period as may have been prescribed by the Court".

### **33. Discretion of Court in executing decrees for restitution of conjugal rights. -**

(1)Notwithstanding anything in rule 32, the Court, either at the time of passing a decree [against a husband] [Inserted by Act 29 of 1923, Section 3.] for the restitution of conjugal rights or at any time afterwards, may order that the decree [shall be executed in the manner provided in this rule] [Substituted by Act 29 of 1923, Section 3, for " shall not be executed by detention in prison.](2)Where the Court has made an order under sub-rule (1) [\*\*\*] [ The words " and the decree-holder is the wife" omitted by Act 29 of 1923, Section 3.], it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor

shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.(3)The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again review the same, either wholly or in part as it may think just.(4)Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

### **34. Decree for execution of document, or endorsement of negotiable instrument. -**

(1)Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.(2)The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.(3)Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.(4)The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.(5)The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :-"C.D., Judge of the Court of (or as the case may be), for A.B. in suit by E.F. against A.B."and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.(6)(a)Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for sub-rule (6) (w.e.f. 1.2. 1977).](b)Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.(c)Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.]

### **35. Decree for immovable property. -**

(1)Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.(2)Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree.(3)Where possession of any building or enclosure is to be delivered and

the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

High Court Amendments-[Himachal Pradesh].-To sub-rule (1), proviso be added as under:-"Provided that before issuing a warrant for delivery of possession of immovable property, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him."-(23-4-1988).[Madras].-In Order 21 in the First Schedule of the Code of Civil Procedure, 1908-(1) After sub-rule (3) of rule 35, the following sub-rule shall be added, namely: "(4) Where delivery of possession of a house is to be given and it is found to be locked, orders of Court shall be taken for breaking open the lock and for delivery of possession of the same to the decree-holder. If it is found at the time of delivery that there are movables in the house to which the decree-holder has no claim and the judgment-debtor is absent, or if present, does not immediately remove the same, the officer entrusted with the warrant for delivery shall make an inventory of the articles so found with their probable value, in the presence of respectable person on the spot, have the same attested by them and leave the movables in the custody of the decree-holder after taking a bond from him for keeping the articles in safe custody pending orders of Court for disposal of the same. The officer shall then make a report to the Court and forward therewith the attested inventory taken by him. The Court shall, thereupon, issue a notice to the judgment-debtor requiring him to take delivery of the said movables within thirty days from the date of the notice and in default they will be sold in public auction at his risk and the proceeds applied for meeting all legitimate expenses of custody and sale and the balance, if any, will be refunded to the judgment-debtor: Provided that if movable articles referred to above are perishable, the officer shall sell them in public auction immediately, and bring the proceeds into Court. The notice to the judgment-debtor shall in such a case call upon him to receive the amount from Court within three months."-(17-8-1966).

### **36. Decree for delivery of immovable property when in occupancy of tenant. -**

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

### **Arrest And Detention In The Civil Prison**

### **37. Discretionary power to permit judgment debtor to show cause against detention in prison. -**

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the



notice and show cause why he should not be committed to the civil prison: Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. (2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

High Court Amendments-[Allahabad].-Substitute "may" for "shall" and omit the proviso.-(1-6-1957). [Patna].-In sub-rule (1), substitute the word "may" for the word "shall" occurring after the words "the Court" and before the word "instead".-(5-4-1961).

### **38. Warrant for arrest to direct judgment-debtor to be brought up. -**

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-At the end of rule 38 convert the full stop into a colon and add the following: "or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in sub-rule (3) of rule 25 of this Order."-(R.O.C. No. 2526/1959, dated 9-2-1967). [Kerala].-Same as that of Madras-(9-6-1959). [Madras].-In rule 38, for the full stop at the end of the rule a comma shall be substituted and the words "or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in rule 25(2) above" shall be added.

### **39. Subsistence allowance. -**

(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court. (2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs. (3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month. (4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison. (5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit: Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

High Court Amendments-[Allahabad].-In sub-rule (5) delete the words "in the civil prison" occurring at two places.-(24-7-1926). [Andhra Pradesh].-Same as that of Madras.[Bombay].-In

Order XXI for rule 39 and its marginal note, substitute the following as rule 39 and marginal note: "39. Subsistence allowance.-(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court and for the cost of conveyance of the judgment-debtor from the place of his arrest to the Court-house.(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled according to the scales fixed under section 57, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.(4) Such sum (if any) as the Judge thinks sufficient for the subsistence and costs of conveyance of the judgment-debtor for his journey from the Court-house to the civil prison and from the civil prison on his release, to his usual place of residence, together with the first of the payments in advance under sub-rule (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the civil prison, and the subsequent payment (if any) shall be paid to the officer in charge of the civil prison.(5) Sums disbursed under this rule by the decree-holder for the subsistence and the cost of conveyance (if any) of the judgment-debtor shall be deemed to be cost in the suit :Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed."-(1-10-1983).[Calcutta].-Delete the words "in the Civil Prison" in sub-rule (5).[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-Same as that of Bombay-(17-8-1961).[Himachal Pradesh].-Same as that of Calcutta.[Karnataka].-Sub-rules (4) and (5) are the same as those of Bombay.-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Sub-rules (4) and (5) are the same as those of Madhya Pradesh.-(9-6-1959).[Madhya Pradesh].-(a) Delete the full stop at the end of sub-rule (1) and add the following."and for the cost of conveyance of the judgment-debtor from the place of his arrest to the Court-house."(b) Substitute the following as sub-rules (4) and (5) in place of the corresponding existing sub-rules:"(4) Such sum (if any) as the Judge thinks sufficient for the subsistence and cost of conveyance of the judgment-debtor for his journey from the Court-house to the civil prison and from the civil prison, on his release, to his usual place of residence together with the first of the payments in advance under sub-rule (3) of such portion of the current month as remains unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the civil prison and the subsequent payments (if any) shall be paid to the officer in charge of the civil prison.(5) Sums disbursed under this rule by the decree-holder for the subsistence and the costs of the conveyance (if any), of the judgment-debtor shall be deemed to be costs in the suit."-(16-9-1960).[Madras].-(1) Substitute the following for sub-rule (1):"(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court and for the payment of the charges of conveyance of the judgment-debtor \*[and of the amin or process-server who executes the warrant of arrest] by bus, train or otherwise whichever is available from the place of arrest to the Court-house."-(4-1-1967 and \*16-9-1970).(2) Sub-rules (4) and (5) are the same as those of Madhya Pradesh.[Orissa].-Same as that of Patna.[Patna].-In sub-rule (5) of rule 39, delete the words "In the civil prison" in the first place where they occur.[Punjab].-Same as that of Calcutta.

#### **40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.-**

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. [Substituted by Act 21 of 1936, Section 4, for the original rule 40.](2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of the Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest: Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.(4) A judgment-debtor released under this rule may be re-arrested.(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

High Court Amendments-[Andhra Pradesh].-Same as in Madras except for the omission in sub-rule (6) of the words at the end of that sub-rule beginning with "and the Judge signing the warrant".[Bombay].-In Order XXI, rule 40, after the existing sub-rule (5), add the following as new sub-rules (6), (7) and (8):"(6) When a judgment-debtor is ordered to be detained in the custody of an officer of a Court under sub-rule (2) or the proviso to sub-rule (3) above, the Court may direct the decree-holder to deposit such amount as, having regard to the specified or probable length of detention, will provide:(a) for the subsistence of the judgment-debtor at the rate to which he is entitled under the scale fixed under section 57, and(b) for the payment to the officer of the Court in whose custody the judgment-debtor is placed or such fees (including lodging charges) in respect thereof as the Court may by order fix: Provided:-(i) that the subsistence allowance and the fees payable to the officer of the Court shall not be recovered for more than one month at a time, and(ii) that the Court may from time to time require the decree-holder to deposit such further sums as it deems necessary.(7) If a decree-holder fails to deposit any sum as required under sub-rule (6) above, the Court may disallow the application and direct the release of the judgment-debtor.(8) Sums disbursed by the decree-holder under sub-rule (6) shall be deemed to be costs in the-suit: Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed."-(1-10-1983).[Gujarat].-Sub-rules (6) and (7) added to rule 40 are the same as those of Madhya Pradesh.-(17-8-1961).[Karnataka].-To rule 40, add the following as sub-rules (6) and (7):"(6) During the temporary absence of the Judge who issued the warrant under rule 37, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality, or where the arrest is

made on a warrant issued by the District Judge, the warrant of committal may be signed by any Judge empowered in writing by the District Judge in this behalf.(7) No judgment-debtor shall be committed to the civil prison or brought before the Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in sub-rule (1) unless and until the decree-holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort. The provisions of sub-rule (5) of rule 39 shall apply to such payments."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as in Madras except for the substitution of the word "Munsif" for the words "District Munsif" in sub-rule (6).-(9-6-1959).[Madhya Pradesh].-In Order 21, rule 40, the following shall be inserted as sub-rules (6), (7) and (8) below sub-rule (5), namely: "(6) When a judgment-debtor is ordered to be detained in the custody of an officer of the Court under sub-rule (2) or the proviso to sub-rule (3) above, the Court may direct the decree-holder to deposit such amount as, having regard to the specified or probable length of detention, will provide (a) for the subsistence of the judgment-debtor at the rate to which he is entitled under the scales fixed under section 57; (b) for the payment to the officer of the Court in whose custody the judgment-debtor is placed of such fees (including lodging charges) in respect thereof as the Court may by order fix: Provided (i) that the subsistence allowance and the fees payable to the officer of the Court shall not be recovered for more than one month at a time, and (ii) that the Court may from time to time require the decree-holder to deposit such further sums as it deems necessary. (7) If a decree-holder fails to deposit any sum as required under sub-rule (6) above, the Court may disallow the application and direct the release of the judgment-debtor. (8) Sums disbursed by the decree-holder under sub-rule (6) shall be deemed to be costs in the suit: Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed."-(16-9-1960).[Madras].-(1) For old sub-rule (6) substitute the following: "(6) During the temporary absence of the Judge who issued the warrant under rule 37 or 38, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality, or, where the arrest is made on a warrant issued by the District Judge, the warrant of committal may be signed by any Subordinate Judge or District Munsif, empowered in writing by the District Judge in this behalf and the Judge signing the warrant of committal in the above cases shall also have the same powers as the Judge who issued the warrant in respect of passing such orders as may be appropriate under sub-rules (1), (3) and (5) of this rule."-(17-3-1954). (2) Add the following sub-rule: "(7) No judgment-debtor shall be committed to the civil prison or brought before the Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in sub-rule (1) unless and until the decree-holder pays into Court such sum as the judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort. Sub-rule (5) of rule 39 shall apply to such payments."-(5-9-1968).

### **Attachment Of Property**

## **41. Examination of judgment-debtor as to his property. -**

(1)[Renumbered as sub.rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-(a)The judgment-debtor, or(b)[where the judgment-debtor is a

corporation] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for " in the case of a corporation" (w.e.f. 1.2.1977).], any officer thereof, or(c)any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.(2)[ Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.(3)In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72.]

#### **42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined. -**

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

#### **43. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor. -**

Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Calcutta].-For rule 43, substitute the following:"43. Where the property to be attached is movable property other than agricultural produce in the possession of the judgment-debtor, the attachment shall be made by actual seizure, at the identification of the decree-holder or his agent, and save as otherwise prescribed, the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:Provided that, when the property seized does not, in the opinion of the attaching officer exceed twenty rupees in value or is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value the attaching officer may sell it at once."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-Same as that of Madhya Pradesh-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-For rule 43, substitute the following:"43. (1) Where

the property to be attached is movable property other than agricultural produce in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay, or when the expenses of keeping it in custody are likely to exceed its value, the attaching officer may sell it at once; and Provided also that, when the property attached consists of live-stock, or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule, he may, at the instance of the judgment-debtor or of the decree-holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached, (a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the prescribed form with one or more sureties for its production when called for; or (b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance. (2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55 or rule 57 or rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment."-(9-2-1967). [Kerala].-For rule 43, the following rule shall be substituted, namely: 43. Attachment of movable property other than agricultural produce in possession of judgment-debtor.-(1) Where the property to be attached is movable property, other than agricultural produce in the possession of the judgment-debtor, the attachments shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once, and; Provided also, that, when the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule, he may, at the instance of the judgment-debtor or of the decree-holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached. (a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in Form No. 15-A of Appendix E to this Schedule with one or more sufficient sureties for its production when called for; or (b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance. (2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55 or rule 57 or rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment. (3) When attached property is kept in the village or place where it is attached.-Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the properties seized. (4) Procedure when attached property is neither sold nor kept in the village or place where it is attached.-If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court. (5) Where attached property kept in the village, etc., is

live-stock.-Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is so retained shall provide for its maintenance, and if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house. Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such live-stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody. (6) Direction for sums expended by attaching officer.-The Court may direct that any sums which have been expended by the attaching officer or are payable to him if not duly deposited or paid, be recovered from the proceeds of property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings."-(9-6-1959).[Madhya Pradesh].-Substitute the following for the existing rule 43:"43. Attachment of movable property other than agricultural produce in possession of judgment-debtor.-(1) Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor the attachment shall be made by actual seizure and the attaching officer shall keep the property in his own custody or in the custody of any of his subordinates and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value the attaching officer may sell it at once; and Provided also that when the property attached consists of live-stock, agricultural implements or other articles which cannot be conveniently removed, and the attaching officer does not act under the first proviso to this rule, he may, at the instance of the judgment-debtor or of the decree-holder or any person claiming to be interested in such property, leave it in the village or at the place where it has been attached (a) in the charge of the judgment-debtor, or of the station pound-keeper, if any, or (b) in the charge of the decree-holder, or of the person claiming to be interested in such property or of such respectable person as will undertake to keep such property, on his entering into a bond with one or more sureties in an amount not less than the value of the property, that he will take proper care of such property and produce it when called for. (2) The attaching officer shall make a list of the property attached and shall obtain thereto the acknowledgment of the person in whose custody the property is left, and if possible, of the parties to the suit, and of at least one respectable person in attestation of the correctness of the list. If the property attached includes both live-stock and other articles, separate list of the live-stock shall similarly be prepared and attested."-(16-9-1960).[Madras].-For Order 21, rule 43, substitute the following rules, viz."43. (1) Where the property to be attached is movable property other than agricultural produce in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once; and Provided also that, when the property attached consists of live-stock, agricultural implements or other articles, which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule, he may, at the instance of the judgment-debtor or of the decree-holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached (a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the Form No. 15-A of Appendix E to this Schedule with one or more

sufficient sureties for its production when called for; or(b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance.(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55 or rule 57 or rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment.

"-(5-9-1958).[Orissa].-Same as that of Patna.[Patna].-Substitute the following for rule 43:"43. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure and the attaching officer shall be responsible for the due custody thereof:Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once."-(18-10-1933).[Punjab].-The rule 43 was renumbered as sub-rule (1) thereof and the following further proviso and sub-rules (2) and (3) were added:"and provided also that, when the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to the rule, he may at the instance of the judgment-debtor or of the decree-holder, or of any person claiming to be interested in such property leave it in the village or place where it has been attached(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the Form No. 15-A of Appendix E to this Schedule with one or more sufficient sureties for its production when called for, or(b) in the charge of an officer of the Court if a suitable place for its safe custody be provided, and the remuneration of the officer for a period of fifteen days at such rate as may from time to time be fixed by the High Court be paid in advance, or(c) in the charge of a village lambardar or such other respectable person as will undertake to keep such property, subject to the orders of the Court, if such person enters into a bond in Form No. 15-B of Appendix E with one or more sureties for its production.(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55, 57 or 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment.(3) When property is made over to a custodian under sub-clause (a) or (c) of clause (1), the schedule of property annexed to the bond shall be drawn up by the attaching officer, in triplicate and dated and signed by(a) the custodian and his sureties,(b) the officer of the Court who made the attachment,(c) the person whose property is attached and made over,(d) two respectable witnesses,Once copy will be transmitted to the Court by the attaching officer and placed on the record of the proceedings under which the attachment has been ordered, one copy will be made over to the person whose property is attached and one copy will be made over to to custodian."[Note.-Additional Form Nos. 15-A and 15-B have been inserted, See Appendix E.1[Rajasthan].-Same as that of Punjab, except for that in clause (c) of the second proviso to sub-rule (1), the word "Patwari" is substituted for the word "lambardar".-(Notification, dated 23-12-1964 and 11-3-1965).

### **43A. Custody of movable property.-**

(1)Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decreeholder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached,



in the custody of any respectable person (hereinafter referred to as the "custodian").[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72(w.e.f. 1.2.1977).](2)If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,-(a)the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage cause by his default; and(b)such liability may be enforced-(i)at the instance of the decree-holder, as if the custodian were a surety under section 145;(ii)at the instance of the judgment-debtor or such other person, on an application in execution; and(c)any order determining such liability shall be appealable as a decree.

High Court Amendments-Rules 43-A and 43-B-[Andhra Pradesh].-Same as those of Madras.[Bombay].-In Order XXI, after the existing rule 43-A, insert the following rule with marginal note as new rule. 43-B and its marginal note:"43B. Attachment of live-stock.-(1) When an application is made for the attachment of live-stock the Court may demand, in advance in cash at rates to be fixed half-yearly or oftener, if necessary, by the Courts with the sanction of the District Judge, the amount requisite for the maintenance of the live-stock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance, and all other charges requisite for the maintenance and custody of the live-stock.(2) If the live-stock be entrusted to any person other than the judgment-debtor, the amount paid by the decree-holder for the maintenance of the live-stock or a part thereof, may, at the discretion of the Court, be paid to the custodian of the live-stock for their maintenance. The produce, such as milk, eggs, etc., if any, may either be sold as promptly as possible for the benefit of the judgment-debtor or may, at the discretion of the Court, be set off against the costs of maintenance of the live-stock."-(1-10-1983).[Delhi].-Same as that of Punjab.Rule 43-A (1)-[Gujarat].-Same as that of Madhya Pradesh-(17-8-1961).Rules 43-A to 43-D-[Himachal Pradesh].-Same as that of Punjab.Rules 43-A and 43-B-[Karnataka].-Same as those of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).Rule 43-A-[Madhya Pradesh]. "43A. Attachment of live-stock.-(1) When an application is made for the attachment of live-stock the Court may demand, in advance in cash at rates to be fixed half-yearly or oftener, if necessary, by the Courts with the sanction of the District Judge, the amount requisite for the maintenance of the live-stock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance and all other charges requisite for the maintenance and custody of the live-stock.(2) If the live-stock be entrusted to any person other than the judgment-debtor, the amount paid by the decree-holder for the maintenance of the cattle or a part thereof may, at the discretion of the Court, be paid to the custodian of the live-stock for their maintenance. The produce, such as milk, eggs, etc., if any, may either be sold, as promptly as-possible for the benefit of the judgment-debtor or may, at the discretion of the Court, be set-off against the cost of maintenance of the live-stock."-(16-9-1960).Rules 43A and 43B-[Madras].-Insert the following as rules 43-A and 43-B:"43A. (1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court, and shall with his report forward a list of the property seized.(2) If attached property is

not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court. 43-B. (1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is so retained shall provide for its maintenance, and, if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house. Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody. (2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of the property, if sold or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings."-(5-9-1968). [Note.-An additional Form, being Form No. 15-A has been inserted in Appendix E.] Rule 43-A-[Orissa].-Same as that of Patna. [Patna].-Insert the following as rule 43-A below rule 43. in Order 2.1: "43-A. (1)-The attaching officer shall, in suitable cases, keep the attached property in the village or locality either (a) in his own custody in any suitable place provided by the judgment-debtor, or in his absence by any adult member of his family who is present, on his own premises or elsewhere; (b) in the case of live-stock, and provided the decree-holder furnishes the necessary funds in the local pound, if a pound has been established in or near the village, in which case the pound-keeper will be responsible for the property to the attaching officer, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description, or such less rate as may be agreed upon; (c) in the custody of a respectable surety, provided the decree-holder furnishes the cost of maintenance and other costs, if any. (2) If in the opinion of the attaching officer the attached property cannot be kept, in the village or locality, through lack of a suitable place, or satisfactory surety, or through failure of the decree-holder to provide necessary funds, or for any other reason, the attaching officer shall remove the property to the Court at the decree-holder's expense. In the event of the decree-holder failing to provide the necessary funds the attachment shall be withdrawn. (3) Whenever attached property is kept in the village or locality as aforesaid the officer shall forthwith report the fact to the Court, and shall with his report forward an accurate list of property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by rule 66. (4) If the debtor shall give his consent in writing to sale of the property without awaiting the expiry of the term prescribed in rule 68, the officer shall receive the same and forward it without delay to the Court for its orders. (5) When the property is removed to the Court it shall be kept by the Nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept on the Court premises, or in the personal custody of the Nazir, he may, subject to the approval by the Court, make such arrangement for its safe custody under his own supervision as may be most convenient and economical, and the Court may fix the remuneration to be allowed to the persons, not being officers, of the Court, in whose custody the property is kept. (6) When property remains in the village or locality where it is attached and any person other than the judgment-debtor shall claim the same, or any part of it, the attaching officer shall nevertheless unless the decree-holder desires to withdraw the attachment of the property so claimed, maintain the attachment, and shall direct the claimant to prefer his claim to the Court. (7) (a) If the decree-holder shall withdraw an attachment or shall be withdrawn, under

sub-rule (2) or sub-rule (9), the attaching officer shall inform the debtor, or in his absence any adult member of his family, that the property is at his disposal.(b) In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the judgment-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.(8) Whenever live-stock is kept in the village or locality where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it under the supervision of the attaching officer; but the latter shall, if required by the decree-holder and on his paying for the same at the rate to be fixed by the District Judge, and subject to the other orders of the Court under whose orders the attachment is made, engage the services of as many persons as may be necessary, for the safe custody of it.(9) In the event of the judgment-debtor failing to feed the attached live-stock in accordance with sub-rule (8), the officer shall call upon the decree-holder to pay forthwith for feeding the same. In the event of his failure to do so, the officer shall proceed as provided in sub-rule (2), and shall report the matter to the Court without delay.(10) When attached live-stock is brought to Court, the Nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.(11) If a pound has been established in or near the place where the Court is held, the Nazir shall be at liberty to place in it such attached live-stock as can be properly kept there, in which case the pound-keeper will be responsible for the property to the Nazir and shall receive the same rates for accommodation and maintenance thereof, as are paid in respect of impounded cattle of the same description, or such less rate as may be agreed upon.(12) If there be no pound available, or, if in the opinion of the Court, it be inconvenient to lodge the attached live-stock in the pound, the Nazir may keep it in his own premises or he may entrust it to any person selected by himself and approved by the Court. The Nazir will in all cases remain responsible for the custody of the property.(13) Each Court shall, from time to time, fix the rates to be allowed, for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The District Judge may make any alterations he deems fit in the rates prescribed by Courts subordinate to him. Where there are two or more Courts in the same place, the rates shall be the same for each Court."-(18-10-1933).Rules 43-A to 43-D-[Punjab].-Insert the following as rules 43-A, 43-B, 43-C and 43-D:"43-A. (1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the property seized.(2) If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court.(3) A custodian appointed under the second proviso to rule 43 may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust and delivering to the proper officer of the Court the property made over to him.(4) When any property is taken back from a custodian, he shall be granted a receipt for the same.43-B. (1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is retained shall provide for its maintenance and, if he fails to do so and it is in charge of an officer of the Court, it shall be removed to the Court-house.Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such stock, from making such arrangements for feeding the same as may not be inconsistent with its safe custody.(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of property if sold, or be paid by the person declared entitled to

delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings.43-C. When an application is made for the attachment of live-stock or other movable property, the decree-holder shall pay into Court in cash such sum as will cover the costs of the maintenance and custody of the property for 15 days. If within three clear days, before the expiry of any such period of 15 days the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.43-D. Any person who has undertaken to keep attached property under rule 43(1)(c) shall be liable to be proceeded against as a surety under section 145 of the Code and shall be liable to pay in execution proceedings the value of any such property wilfully lost by him."-(1-11-1966).

#### **44. Attachment of agricultural produce. -**

Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,-(a)where such produce is a growing crop, on the land on which such crop has grown, or(b)where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgmentdebtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

High Court Amendments-[Calcutta].-Insert the words "at the identification of the decree-holder or his agent" after the words "attachment shall be made" in rule 44.-(25-9-1941).[Gauhati].-Same as that of Calcutta.Order 21, Rule 44-AHigh Court Amendments-[Bombay].-In Order 21, after the existing rule 44, insert the following rule with marginal note as new rule 44-A and its marginal note:"44-A. Copy of the warrant of attachment to be sent to the Collector where agricultural produce is attached.-Where the property to be attached is agricultural produce, a copy of the warrant or the order of attachment shall be sent by post to the office of the Collector of the District in which the land is situate."-(1-10-1983).[Gujarat].-Same as that of Bombay- (17-8-1961).

#### **45. Provisions as to agricultural produce under attachment. -**

(1)Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.(2)Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or

formed part of, the decree.(3)Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.(4)Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.(5)A growing crop which from its nature does not admit of being stored shall not be attached under the rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order 21, rule 45, for the existing sub-rule (1), and its marginal notes substitute the following as sub-rule (1) and marginal note: "(1) Provisions as to agricultural produce under attachment.-Where agricultural produce is attached the Court shall make such arrangement for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of growing crop shall specify the time at which it is likely to be fit to be cut or gathered, and the applicant shall deposit in Court at the time of the application such sum as the Court shall deem sufficient to defray the cost of watching and tending the crop till such time."-(1-10-1983).[Calcutta].-Add the following to sub-rule (1): "and the applicant shall deposit in Court such sum as the Court shall require in order to defray the cost of watching or tending the crop till such time."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-Same as that of Bombay-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-In rule 45 for the full stop at the end of sub-rule (i) a semicolon shall be substituted and the words "and the applicant shall deposit in Court within a date to be fixed by Court, such sum as the Court may deem sufficient to defray the cost of watching and tending the crop till such time" shall be added.[Orissa].-Same as that of Patna.[Patna].-Add to sub-rule (1) of rule 45 after deleting the full stop at the end of the sub-rule: "and the applicant shall pay into Court such sums as he may from time to time be required by the Court to pay in order to defray the cost of such arrangements."[Punjab].-Add the following to sub-rule (1) of rule 45: "and with every such application such charges as may be necessary for the custody of the crop up to the time at which it is likely to be fit to be cut or gathered shall be paid to the Court."

#### **46. Attachment of debt, share and other property not in possession of Judgment-debtor . -**

(1)In the case of-(a)a debt not secured by a negotiable instrument,(b)a share in the capital of a corporation,(c)other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,-(i)in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until the further order of the Court;(ii)in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;(iii)in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.(2)A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation and, in the

case of the other movable property (except as aforesaid), to the person in possession of the same.(3)A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

#### **46A. Notice to garnishee.-**

(1)The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.(2)An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor.(3)Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

#### **46B. Order against garnishee. -**

Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

#### **46C. Trial of disputed questions. -**

Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

#### **46D. Procedure where debt belongs to third person. -**

Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

#### **46E. Order as regards third person. -**

After hearing such third person and any person or persons who any subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

#### **46F. Payment by garnishee to be valid discharge. -**

Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

#### **46G. Costs.-**

The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

#### **46H. Appeals. -**

An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

#### **46I. Application to negotiable instruments. -**

The provisions of rule 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.

High Court Amendments-Rules 46-A to 46-I-[Andhra Pradesh].-Same as those of Madras-(5-1-1961).[Bombay].-In Order XXI, for the existing rules 46-A to 46-I, substitute the following rules:"46-A. Payment of debt or amount under negotiable instrument or delivery of movable property in Court, etc. in the hands of garnishee.-(1) Upon the application of the decree-holder, the Court may in the case of,(1) any debt (other than a debt secured by a mortgage or a charge or a negotiable instrument) of which the Civil Courts are not precluded from adjudicating upon by any law for the time being in force and which has been attached under rule 46 of this Order; or(2) any movable property not in possession of the judgment-debtor which has been attached under rule 46 of this Order; or(3) any negotiable instrument which has been attached under rule 51 of this Order;or(4) any movable property of the nature referred to in (1) to (3) above in the custody of any public officer other than officer of any Court, which has been attached under rule 52 of the Order, issue notice to any person liable to pay to the judgment-debtor such debt or the amount due under such negotiable instrument or liable to deliver such movable property or to

account or it to the judgment-debtor (hereafter referred to as "the garnishee") calling upon him within the period specified in the notice either to pay into Court the said debt or amount payable under the said negotiable instrument or deliver into Court the said movable property, as the case may be, or so much thereof as may be sufficient to satisfy the decree or order and the cost of execution or to appear before the Court and show cause why he should not be ordered to do so. The notice shall be served on the garnishee and, if the Court so directs on the judgment-debtor also. The notice shall be served eight clear days before the returnable date thereof: Provided that, subject to the proviso to rule 46-C, if by any law for the time being in force, the jurisdiction to adjudicate upon the debt or claim relating to the negotiable instrument or movable property in respect of which the application aforesaid is made is conferred on a Civil Court other than the execution Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court shall transfer the case to the competent Court and on such transfer the Court to which the case is transferred will deal with it in the same manner as if it had been originally instituted in that Court.

**Explanation.**-When the District Court itself is the competent Court it may deal with the case in the same manner as if it had been originally instituted in that Court.

**(2)** Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the Garnishee is indebted to the judgment-debtor or that the property belongs to the judgment-debtor.

**46-B. Order against garnishee.**-Where the garnishee does not within the time specified in the notice or within such time as the Court may allow to pay into Court the said debt or the amount payable under the said negotiable instrument or does not deliver into Court the said property or so much of the debt or amount or property as is sufficient to satisfy the decree or order and the cost of the execution or does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice or pass such other order as it may deem fit.

**46-C. Determination of disputed questions.**-If the garnishee disputes his liability, the Court instead of making such order may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order upon the notice as it may think fit: Provided that if the amount of the debt or the amount payable under the negotiable instrument or the value of the property in respect of which the application aforesaid is made exceeds the pecuniary jurisdiction of the Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court or any other competent Court to which it may be transferred by the District Court will deal with it in the same manner as if it had been originally instituted in that Court.

**46-D. Discharge of garnishee.**-If the garnishee appears in answer to the garnishee notice shows cause to the satisfaction of the Court, the notice shall be dismissed and upon such dismissal the attachment ordered under rule 46, 51 or 52 of this Order shall stand raised and the prohibitory order, if any, shall stand discharged.

**46-E. Adjudication of claims by third party.**-Whenever in the course of proceedings against the garnishee it is alleged or appears to the Court to be probable that some person other than the judgment-debtor is or claims to be entitled to the debt attached or the amount payable under the negotiable instrument or the property attached or claims to have a charge or lien upon or interest in such debt or amount or property the Court may order such third person to appear before it and state the nature of his claim with particulars thereof, and, if necessary, prove the same.

**46-F. Claim of third person to be tried as in a suit.**-After hearing such third person and any other person who may subsequently be ordered to appear, or in case of such third person or other person not appearing when ordered, the Court may pass such



order as is provided under rule 46-B, 46-C or 46-D or such other order or orders upon such terms, if any, with respect to the lien or charge or interest if any of such third or other person as it may deem fit and proper including an order that any question or issue necessary for determining the validity of the claim of the third or other person be tried as though it were an issue in a suit. 46-G. Execution of order under rules 46-B, 46-C and 46-F.-(a) An order made by the Court under rule 46-B, 46-C or 46-F against the garnishee shall be executable as if it were a decree of the Court in favour of the decree-holder.(b) When money or negotiable instrument or property is received in Court as a result of an order under rule 46-B, 46-C or 46-F above, the money shall not be paid and further steps in execution in respect of the negotiable instrument or property shall not be taken till the time for filing an appeal against the said order is over and where an appeal is filed, till further orders of the Appellate Court. 46-H. Discharge of garnishee's liability.-Any payment or delivery made by a garnishee in compliance with a garnishee notice or order made against him under rule 46-B, 46-C or 46-F of this Order or any money or property realised in execution of an order under these Rules shall be a valid discharge of the garnishee's liability to the judgment-debtor and to any other person or persons ordered to appear under rule 46-E or 46-F of this order for the amount paid or levied or property delivered or property realised in execution, although the decree in execution of which the application under rule 46-A was made, or the order passed in the proceedings on such application may be set aside or reversed. 46-I. Garnishee proceeding against a firm.-Where a debt due by a firm to the judgment-debtor has been attached it may be proceeded against under rules 46-A to 46-H of this Order in the same manner as in the case of an ordinary garnishee, and provisions of Order XXX of this Code shall, so far as applicable apply to such proceedings although one or more partners of such firm may be resident outside the jurisdiction of the Court: Provided that any person having the control or management of the partnership business or any partner of the firm who is within the jurisdiction of the Court is served with garnishee notice. An appearance by any partner pursuant to such notice shall be sufficient appearance by the firm. 46-J. Costs.-The costs of any application made under rule 46-A of this order and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court. 46-K. Appeal against order made under rules 46-B, 46-C, 46-F and 46-G.-Any order made under rule 46-B, 46-C, 46-F or 46-G of this Order shall be appealable as a decree."-(1-10-1983 and 20-4-1989).[Calcutta].-Add the following after rule 46:"46-A. The Court may in case of a debt other than a debt, secured by a mortgage or a charge or by a negotiable instrument, which has been attached under rule 46 or 51 of this Order, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so: Provided that if the debt in respect of which the application aforesaid is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge will deal with it in the same manner as if the case has been originally instituted in that Court. Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor. 46-B. Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution or does not appear and show cause in answer to the

notice, the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.46-C. Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders upon the parties as may seem just.46-D. Where it is suggested or appears to be probable that the debt belongs to some third person or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim (if any) to such debt and prove the same.46-E. After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, if any, of such third or other persons as may seem fit and proper.46-F. Payment made by the garnishee on a notice under rule 46-A or under any such order as aforesaid shall be valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid, for the amount paid or levied although such judgment may be set aside or reversed.46-G. The costs of any application made under rule 46-A and of any proceeding arising therefrom or incidental thereto, shall be in the discretion of the Court.46-H. An order made under rule 46-B or 46-C or 46-E shall be appealable as a decree." Rules 46-A to 46-H-[Gauhati].-Same as those of Calcutta.[Gujarat].-Same as those of Bombay except that in rule 46-H the figures and letter "46-B" are omitted.-(17-8-1961).[Karnataka].-Same as those of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).Rules 46-A to 46-I-[Kerala].-After rule 46, the following rules shall be inserted, namely:"46-A. Procedure when debt or any movable property not in possession of judgment-debtor.-The Court may, in the case of any debt due to the judgment-debtor (other than debt secured by a mortgage or a charge or by negotiable instrument), or any movable property in which he has an interest, but not in his possession, which has been attached under rule 46 of this Order, upon the application of the attaching creditor, issue notice to any person liable to pay such debt or deliver an account for such movable property (such person to be hereinafter called the 'garnishee') calling upon him either to pay or deliver into Court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so. Such application shall be supported by an affidavit verifying the fact alleging and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor: Provided that if the debt or property in respect of which the application aforesaid is made is of value beyond the pecuniary jurisdiction of the Court, the execution case shall be sent to the District Court to which the said Court is subordinate and thereupon the District Court shall deal with it in the same manner as if the case had been originally instituted in that Court.46-B. Procedure when garnishee does not forthwith pay the amount.-Where the garnishee does not forthwith or within such time as the Court may allow, pay or deliver into Court the amount due from him or the property deliverable by him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, or does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order being made, execution may issue as though such order were a decree against him.46-C. Procedure where garnishee disputes his liability.-Where the garnishee disputes his liability the Court may order that any issue or question necessary for the

determination of the liability shall be tried as if it were an issue in a suit and upon determination of such issue shall make such order as may seem just: Provided that where the garnishee admits his liability but disputes its extent and the decree-holder does not seek to recover from the garnishee any sum in excess of what he admits is due from him the Court shall not be bound to decide the dispute and may direct the garnishee to pay such sum or so much thereof as is sufficient to satisfy the decree and the costs of the execution proceedings.

**46-D. Procedure when debt or property belongs to a third person.**-Where in any proceeding under these rules it is alleged or appears to the Court to be probable that the debt or property attached or sought to be attached belongs to some third person or that any third person has a lien or charge upon or an interest in it, the Court, may order such third person to appear and state the nature and particulars of his claim, if any, to such debt or property and prove the same.

**46-E. Order to be made on hearing such persons.**-After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered, the Court may pass such order as is hereinbefore provided or make such other order as it thinks fit, upon such terms, in all cases with respect to the lien, charge or interest, if any, of such third or other persons as may seem fit and proper.

**46-F. Payment or delivery under order to be a valid discharge.**-Payment or delivery made by the garnishee on a notice under rule 46-A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor, and any other person ordered to appear as aforesaid, for the amount paid, delivered or realised although such order or the judgment may be set aside or reversed.

**46-G. Procedure re: debt owing from a firm.**-Debts owing from a firm carrying on business within the jurisdiction of the Court may be proceeded against under rules 46-A to 46-E of this Order, although one or more members of such firm may be resident outside the jurisdiction : Provided that if any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee notice, an appearance by any member pursuant to such notice shall be sufficient appearance by the firm.

**46-H. Costs to be in the discretion of the Court.**-The cost of any application made under rule 46-A and of any proceeding arising therefrom or incidental thereto or any order made thereon shall be in the discretion of the Court.

**46-I. Orders appealable.**-An order made under rule 46-B, 46-C or 46-E, shall have the same force as a decree and shall be appealable as such."-(9-6-1959).[Madras].-Add the following rules:"

**46-A.** The Court may in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge or a debt recoverable only in a Revenue Court, or a debt on a negotiable instrument the amount of which exceeds the pecuniary jurisdiction of the Court) which has been attached under Order 21, rule 46, and in the case of a negotiable instrument which has been attached under Order 21, rule 51, upon the application of the decree-holder, issue notice to the person liable to pay such debt (hereinafter called the garnishee) calling upon him to appear before the Court and show cause why he should not pay the debt due from him to such judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution.

**46-B.** If the garnishee does not appear or show cause in answer to the notice issued under rule 46-A, or if he does not dispute his liability or its extent, the Court may direct the garnishee within such time as it may allow to pay into Court the debt or the amount due under the negotiable instrument as the case may be or so much thereof as may be sufficient to satisfy the decree and the costs of the execution proceedings.

**46-C.** If the garnishee disputes his liability or, its extent, the Court may decide the dispute and thereafter direct the garnishee within such time as it may allow to pay into Court such sum as it has found to be due from him or so much thereof as may be sufficient to satisfy the decree

and the costs of the execution proceedings: Provided that where the garnishee admits his liability but disputes its extent and the decree-holder does not seek to recover from the garnishee any sum in excess of what he admits is due from him, the Court shall not be bound to decide the dispute and may direct the garnishee to pay such sum or so much thereof as is sufficient to satisfy the decree and the costs of the execution proceedings. 46-D. If the garnishee alleges that the debt belongs to some third person or that a third person has a lien, or charge or other interest, upon or in it, the Court may order such third person to be served with notice to appear and state the nature and particulars of his claim. 46-E. After hearing the garnishee or such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing as ordered, the Court may pass such order as is provided for in the foregoing rules or such other order as it shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third person or other person as shall seem just and reasonable. 46-F. Any payment made by the garnishee in pursuance of or in execution of an order under these rules shall be a valid discharge to him as against the judgment-debtor or any other person ordered to appear as aforesaid, for the amount paid, or realized although such order or judgment may be set aside, or reversed. 46-G. If at any stage of the proceedings under rules 46-A to 46-F the Court considers that the matter is too complicated to be dealt with under the above said provisions, it may drop the proceedings leaving the other rights and remedies of the parties unaffected. 46-H. The costs of any application made under the foregoing rules and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court. 46-I. An order passed by the Court determining the liability of a garnishee or directing payment by him under rules 46-B, 46-C and 46-E shall be executed as if it were a decree and shall be appealable as such."-(10-8-1955).[Orissa].-Same as those of Patna.[Patna].-See rules 63-A to 63-H added by the Patna High Court.

#### **47. Attachment of share in movables. -**

Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

#### **48. Attachment of salary or allowances of servant of the Government or railway company or local authority. -**

(1) Where the property to be attached is the salary or allowances of a [servant of the Government] [Substituted by Act 5 of 1943, Section 3, for " public officer" .] or of a servant of a railway company or local authority [or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72(w.e.f. 1.2. 1977).] the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the

appropriate Government may be notification in the Official Gazette appoint [in this behalf,-(a)where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remits to the Court the amount due under the order, or the monthly instalments, as the case may be;(b)where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to the disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time, to be disbursed by the aggregate of the amounts from time to time remitted to the Courts.](2)Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the [appropriate Government] [Substituted by Act 5 of 1942, Section 3 and Sch.II, for " the Central Government or the Provincial Government as the case may be" .] in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.(3)[ Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2) shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government Company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of the rule.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for sub.rule (3) (w.e.f. 1.2.1977).][Explanation.-In this rule, "appropriate Government" means,-(i)as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;(ii)as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any other Government company, the State Government.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for Explanation (w.e.f. 1. 2.1977).]

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Madras].-Substitute a comma for the period at the end of the last sentence of sub-rule(1) and add the following at the end of sub-rule (1):"such amount or instalment being calculated to the nearest anna by fractions of an anna of six pies and over being considered as one anna and omitting amounts less than six pies."  
 "-(5-9-1968).

#### **48A. [ Attachment of salary or allowances of private employees. -**

(1)Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.(2)Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.(3)Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtors is within the local limits to which this Code for the time being extends and while he is beyond those-limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.] [Substituted by Act 25 of 1942, Section 3 and Sch.II, for "the Central Government or the Provincial Government may by notification in their Official Gazette" ][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72(w.e.f. 1.2.1977).]

#### **49. Attachment of partnership property. -**

(1)Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.(2)The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property, and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the degreeholder by such partner, or as the circumstances of the case may require.(3)The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.(4)Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within [India] [Substituted by Act 2 of 1951, Section 3, for the " States " ].(5)Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within [India] [Substituted by Act 2 of 1951, Section 3, for the " States " ].(6)Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such application shall be similarly served.

## 50. Execution of decree against firm. -

(1)Where a decree has been passed against a firm, execution may be granted-(a)against any property of the partnership;(b)against any person who has appeared in his own name under rule 6 or rule 7 of Order 30 or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;(c)against any person who has been individually served as a partner with a summons and has failed to appear:Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of [section 30 of the Indian Partnership Act, 1932 (9 of 1932)] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for certain words (w.e.f. 1.2.1977)].(2)Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.(3)Where the liability of any person has been tried and determined under sub-rule (2) the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.(4)Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.(5)[ Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provision of rule 10 of Order XXX.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72(w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-In sub-rule (2), add the words:"or to which the decree is transferred for execution" after the words "Court which passed the decree."-(1-6-1957).[Orissa].-Same as that of Patna.[Patna].-In sub-rule (2) of rule 50 add the words "or to the Court to which it is sent for execution" after the words "passed the decree" and before the words "for leave".

## 51. Attachment of negotiable instruments. -

Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

High Court Amendments-[Allahabad].-Substitute the following for rule 51, namely:"51. Where any property has been attached in execution of a decree and the Court for any reason passes an order dismissing the execution application the attachment shall, in the absence of any order passed by the Court, be deemed to subsist for a period of fifteen days after the dismissal of the application for execution and no fresh attachment of the e... Ze property shall be necessary if a fresh application for execution is made within such period of fifteen days. If no such application is made, the attachment shall cease:Provided that in the case of movable property the attachment shall not be continued after an order dismissing the execution application has been passed unless the decree-holder has given his consent in writing and therein deposit with the Court on his behalf a

sum of money sufficient to meet the expenses of the attachment during the extended period.  
 "-(1-7-1957).

## **52. Attachment of property in custody of Court or public officer. -**

Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued: Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Add the following proviso at the end of rule 52: "Provided further that where the Court whose attachment is determined to be prior in point of time receives or realises such property, the receipt or realisation shall be deemed to be on behalf of all the Courts in which there have been attachments of such property in execution of money decrees prior to the receipt of such assets. Priority of attachment for the purpose of this rule shall be determined on the same principles as in the case of attachment of property not in the custody of any Court."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madras].-Add the following as proviso (it) and renumber the existing proviso as (i):- "(ii) Provided further that, where Court whose attachment is determined to be prior receives or realizes such property, the receipt or realization shall be deemed to be on behalf of all the Courts in which there have been attachments of such property in execution of money decrees prior to the receipt of such assets. Explanation.-Priority of attachment in the case of attachment of property in the custody of Court shall be determined on the same principles as in the case of attachment of property not in the custody of Court."

## **53. Attachment of decrees. -**

(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made, -(a) if the decrees were passed by the same Court, then by order of such Court, and (b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until -(i) the Court which passed the decree sought to be executed cancels the notice, or (ii) (a) the holder of the decree sought to be executed, or [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for sub.clause (ii) (w.e.f. 1. 2.1977).] (b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree.](2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under subhead (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceeds to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed. (3) The holder of a decree sought to be executed by the attachment of another of decree the nature specified in sub-rule (1) shall be



deemed to be the representative of the holder of the attached decree and to be entitled to executive such attached decree in any manner lawful for the holder thereof.(4)Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1) the attachment shall be made by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.(5)The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.(6)On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgmentdebtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order [with knowledge thereof or] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

High Court Amendments-[Allahabad].-(a) In clause (b) of sub-rule (1) and in sub-rule (4), add "and to any other Court to which the decree has been transferred for execution" after the words "such other Court".(b) In sub-rule (6), for the words "after receipt of notice thereof" read "after receipt of notice, or with the knowledge thereof".-(24-7-1926).[Andhra Pradesh].-Same as that of Madras.[Bombay].-(i) In Order XXI, for the existing sub-rule (1)(b), substitute the following:-(b) if the decree sought to be attached was passed by another Court, then by the issue, to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court and to any other Court to which the decree has been transferred, for execution to stay the execution of its decree unless and until(i) the Court which passed the decree sought to be executed cancels the notice, or(ii) (a) the holder of the decree sought to be executed, or(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree;"(ii) Substitute the following sub-rule (4) for the existing sub-rule (4) of rule 53 in Order XXI: "(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court also by sending to such other Court and to any other Court to which the decree has been transferred for execution a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent."-(1-10-1983).[Calcutta].-In sub-rule (1)(b), rule 53, after the words "to such other Court" insert the words "and to any Court to which it has been transferred for execution"; also insert therein the words "or Courts" after the words "requesting such other Court".In sub-rule (1)(b)(ii), cancel the words "to execute its own decree" and substitute therefor the words "to execute the attached decree with the consent of the said decree-holder expressed in writing or the permission of the attaching Court".In sub-rule (4), insert after the words "by sending to such other Court", the words "and to any Court to which it has been transferred for execution".In sub-rule (6), substitute

the words "in contravention of the said order with knowledge thereof" for the words "in contravention of such order after the receipt of notice thereof".[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madhya Pradesh].-Substitute(a) "to such other Court and to any other Court to which the decree has been transferred for execution" for the word "to such other Court" occurring in clause (b) of sub-rule (1) and in sub-rule (4); and(b) the following as sub-clause (ii) of clause (b) of sub-rule (1) in place of the existing sub-clause: " (ii) the holder of the decree sought to be executed or his judgment-debtor with the consent of the said decree-holder expressed in writing or with the permission of the attaching Court applies to the Court receiving such notice to execute the attached decree."-(16-9-1960).[Madras].-(i) Substitute the following for sub-rule (1)(b)(ii):"(ii) the holder of the decree sought to be executed or his judgment-debtor if he has obtained the consent in writing of the decree-holder or the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree."(ii) Add the following as sub-rule (1)(c) to rule 53 of Order 21: "(c) If the decree sought to be attached has been sent for execution to another Court, the Court which passed the decree shall send a copy of the said notice to the former Court, and thereupon the provisions of clause (b) shall apply in the same manner as if the former Court had passed the decree and the said notice had been sent to it by the Court which issued it."[Patna].-Substitute the following for rule 53(1)(b): "(b) If the decree sought to be attached was passed by another Court, then by the issue to such other Court (or to the Court to which the decree may have been transferred for execution) of a notice by the Court before which the application has been made requesting such other Court (or the Court to which the decree may have been transferred for execution, as the case may be) to stay the execution of the decree sought to be attached unless and until(i) the Court which has issued the notice shall cancel the same, or(ii) the holder of the decree sought to be executed, or his judgment-debtor, with the consent of the said decree-holder expressed in writing or the permission of the attaching Court, applies to such other Court (or to the Court to which the decree may have been transferred for execution) to execute the attached decree."[Punjab].-(1) Add the following words under sub-rule (1)(b) after the words "to such other Court": "and to the Court to which it has been transferred for execution".(2) In sub-rule (1)(b)(ii) substitute the words "the attached" for the words "its own"; and insert the following words between the words "executed or" and "his judgment-debtor": "with the consent of the said decree-holder expressed in writing or with the permission of the attaching Court."(3) In sub-rule (6), substitute the words "with the knowledge" for the words "after receipt of notice".-(7-4-1932).

## **54. Attachment of immovable property. -**

(1)Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.(1A)[The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72(w.e.f. 1.2.1977).](2)The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government in the office of the Collector of the district in

which the land is situate [and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72.]

High Court Amendments-[Allahabad].-(1) At the end of sub-rule (2) substitute a comma for the full stop and thereafter add the following:"and, where the property, whether paying revenue to Government or otherwise, is situate within cantonment limits, in the office of the Local Cantonment Board and of the Military Estates Officer concerned."-(27-9-1941).(2) Substitute the following for sub-rule (3):"3. The attachment shall be deemed to have been made against transferee without consideration from the judgment-debtor from the date on which they respectively had knowledge of the order of attachment, and as against all other persons from the date on which they respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed under sub-rule (2) whichever is earlier."-(5-2-1983).[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XXI, for rule 54 and its marginal note, substitute the following as rule 54 and the marginal note:"54. (1) Attachment of immovable property.-Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge, such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged.(1-A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.(2) Copies of the order shall also be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be caused to be made in the revenue records, city survey records, or village panchayat records as may be required in the particular case.(3) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate, and also, where the property is situate within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village."-(1-10-1983).[Calcutta].-(1) Add the following to sub-rule (2):"and also, where the property is situated within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned."(2) Add the following as sub-rule (3):"(3) Such order shall take effect, where there is no consideration for such transfer or charge from the date of the order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged, or from the date when the order is proclaimed under sub-rule (2) whichever is earlier."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Gujarat].-(1) The following shall be added to sub-rule (1) of rule 54:"Such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged."(2) Substitute a

comma for the full stop at the end of rule 54(2) and add the following thereafter:"and also, where the property is situate within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned."-(17-8-1961).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-In sub-rule (2) of rule 54 convert the full stop into a comma and add the words "and where the property is situated within the limits of a Municipality or other local authority also in the principal office of the said Municipality or the local authority."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-(i) For sub-rule (2), the following sub-rule shall be substituted, namely:"(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be affixed on a conspicuous part of the property and thereupon, a conspicuous part of the Court-house and also in the village office or, in case there is no such office, in the Taluk office of the place in which the land is situate and where the property is situated within the limits of a Municipality or Panchayat, in the office of the Municipality or Panchayat within the limits of which the property is situate."(ii) after sub-rule (2) the following sub-rule shall be inserted, namely:"(3) The attachment shall be deemed to have taken as against transferees without consideration from the judgment-debtor from the date of the order of attachment and as against all other persons from the date on which they respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed under sub-rvle (2) whichever is the earlier."-(9-6-1959).[Madhya Pradesh].-(1) Delete the full stop at the end of sub-rule (2) and add the following words:"and also where the property is situate within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned."(2) After sub-rule (2) of rule 54, insert the following sub-rule:"(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property and against all other transferees from the judgment-debtor from the date on which such order is made."-(16-9-1960).[Madras].-(a) Substitute the following for sub-rule (2):"(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode. A copy of the order shall be affixed on a conspicuous part of the property and on a conspicuous part of the Court-house. Where the property is land paying revenue to the Government, a copy of the order shall be similarly affixed in the office of the Revenue Divisional Officer of the area where the land is situated. Where the property is situated within cantonment limits the order shall be similarly affixed in the office of the Local Cantonment Board and the Military Estates Officer concerned, and where the property is situated within the limits of a Municipality, in the office of the Municipality within the limits of which the property is situated."(b) Add the following as sub-rule (3):"(3) The order of attachment shall be deemed to have been made as against transferees without consideration from the judgment-debtor from the date of the order of attachment, and as against all other persons from the date on which they respectively had knowledge of the order of attachment, or the date on which the order was duly proclaimed under sub-rule (2), whichever is earlier."-(5-9-1968).[Orissa].-Same as that of Patna.[Patna].-Same as Madhya Pradesh.[Punjab].-(1) At the end of sub-rule (2) of rule 54, substitute semicolon for full stop and add:"Where the property is land situated in a cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates Officer in whose area that cantonment is situated."(2) The following was added as sub-rule (3) for rule 54:"(3) The order shall take effect, as against persons claiming under a gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier."

## **55. Removal of attachment after satisfaction of decree. -**

Where-(a)the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or(b)satisfaction of the decree is otherwise made through the Court or certified to the Court, or(c)the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

High Court Amendments-[Allahabad].-Substitute the following for rule 55:"55. (1) Notice shall be sent to the sale officer executing a decree of all applications for rateable distribution of assets made under section 73(1) in respect of the property of the same judgment-debtor by persons other than the holder of the decree for execution of which the original order was passed.(2) Where(a) the amount decreed [which shall include the amount of any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1)] with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or(b) satisfaction of the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1)] is otherwise made through the Court or certified to the Court, or(c) the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1)] is set aside or reversed, the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule."-(1-6-1918).

## **56. Order for payment of coin or currency notes to party entitled under decree. -**

Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

## **57. [ Determination of attachment. -**

(1)Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.(2)If the Court omits to give such direction, the attachment shall be deemed to have ceased.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 57 (w.e.f. 1.2.1977).]

High Court Amendment-[Bombay].-For rule 57, substitute the following:"57. Determination of attachment.-Where any property has been attached in execution of a decree and the Court for any reason passes an order dismissing an execution application, the Court shall direct whether the

attachment shall continue or cease. If the Court omits to make an order and if the order dismissing the execution application is appealable the attachment shall continue till expiry of the period prescribed for filing an appeal or where appeal has been filed, till such further periods as the appellate Court may direct".-(1-10-1983).

**Adjudication of claims and objections**[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for the heading and rules 58 to 63 (w.e.f. 1.2.1977).]

## **58. Adjudication of claims to, or objections to attachment of, property. -**

(1)Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:Provided that no such claim or objection shall be entertained-(a)where, before the claim is preferred or objection is made, the property attached has already been sold; or(b)where the Court considers that the claim or objection was designedly or unnecessarily delayed.(2)All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.(3)Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-(a)allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or(b)disallow the claim or objection; or(c)continue the attachment subject to any mortgage, charge or other interest in favour of any person; or(d)pass such order as in the circumstances of the case it deems fit.(4)Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.(5)Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive.

Order 21, Rule 58-AHigh Court Amendment-[Madras].-In Order 21, after rule 58, insert the following rule as rule 58-A:"58-A. Order of attachment to be communicated to the Registering Officer.-Any order of attachment passed under rule 54 of this Order raising the attachment by removal, determination or release passed under rule 55, 57 or 58 of this Order, shall be communicated to the Registering Officer within local limits of whose jurisdiction the whole or any part of the immovable property comprised in such order is situate."-(29-6-1987).

## **59. Stay of sale. -**

Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-(a)if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or(b)if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any

such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.]

## 60. to 63. Omitted.

[Omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), Section 72 (w.e.f. 1.2.1977).].

Order 21, Rules 63-A to 63-H High Court Amendments-[Calcutta].-Add the following as rule 63-A: "63-A.-When an attachment of movable property ceases, the Court may order the restoration of the attached property to the person in whose possession it was before the attachment. "(3-11-1933).[Gauhati].-Same as that of Calcutta.[Patna].-Add the following heading and rules below rule 63: "63-A. Garnishee Orders.-Where a debt (other than a debt secured by a mortgage or a debt recoverable only in a Revenue Court or a debt the amount of which exceeds the pecuniary jurisdiction of the Court) has been attached under rule 46 and the debtor prohibited under clause (i) of sub-rule (1) of rule 46 (hereinafter called the garnishee) does not pay the amount of the debt into Court in accordance with rule 46, sub-rule (3), the Court, on the application of the decree-holder may order a notice to issue calling upon the garnishee to appear before the Court and show cause why he should not pay into Court the debt due from him to the judgment-debtor. A copy of such notice shall, unless otherwise ordered by the Court, be served on the judgment-debtor. 63-B. (1) If the garnishee does not pay into Court the amount of the debt due from him to the judgment-debtor, and if he does not appear in answer to the notice issued under rule 63-A, or does not dispute his liability to pay such debt to the judgment-debtor, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue against the garnishee as though such order were a decree against him. (2) If the garnishee appears in answer to the notice issued under rule 63-A, and disputes his liability to pay the debt attached, the Court, instead of making an order as aforesaid, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and may proceed to determine such issue, and upon the determination of such issue shall pass such order upon the notice as shall be just. 63-C. Whenever in any proceedings under the foregoing rules it is alleged by the garnishee that the debt attached belongs to some third person, or that any third person has a lien or charge upon or interest in it, the Court may order such third person to appear and state the nature and particulars of his claim, if any, upon such debt, and prove the same, if necessary. 63-D. After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing as ordered, the Court may pass such order as is provided in the foregoing rules, or make such other order as the Court shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as shall seem just and reasonable. 63-E. Payment made by, or levied by execution upon the garnishee in accordance with any order made under these rules shall be a valid discharge to him as against the judgment-debtor, and any other person ordered to appear under these rules, for the amount paid or levied, although such order or the judgment may be set aside or reversed. 63-F. The costs of any application for the attachment of a debt under the foregoing rules and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court. Costs awarded to the decree-holder shall, unless otherwise directed, be retained out of the money recovered by him

under the garnishee order and in priority to the amount of his decree.63-G. Out of the amount recovered under the garnishee order the Court shall deduct a sum equal to the Court-fee payable under the Indian Court-fees Act on a plaint in a suit for recovery of the money and credit the same to the Government.63-H. (1) Where the liability of any garnishee has been tried and determined under these rules the order shall have the same force and be subject to the same conditions as to appeals or otherwise as if it were a decree.(2) Orders not covered by clause (1) shall be appealable as orders made in execution."

### **Sale Generally**

## **64. Power to order property attached to be sold and proceeds to be paid to person entitled. -**

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

High Court Amendments-[Madras].-In rule 64, after the words "Any Court executing a decree may" insert the following words, namely, "after notice to the decree-holder and judgment-debtor".-(10-4-1963).[Orissa].-For the words "attached by it" substitute the words "in respect of which it has made an order of attachment, whether before or after the decree".-(25-5-1984).[Patna].-(i) For the words "attached by it" substitute the words "in respect of which it has made an order of attachment".(ii) Insert the word "which is" between the words "and" and "liable".

## **65. Sales by whom conducted and how made. -**

Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

High Court Amendment-[Madhya Pradesh].-In rule 65, the following sentence shall be added, namely:"Such officer or person shall be competent to declare the highest bidder as purchaser at the sale, provided that, where the sale is made in, or within the precincts of the Court-house, no such declaration shall be made without the leave of the Court."-(16-9-1960).

## **66. Proclamation of sales by public auction. -**

(1)Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.(2)Such proclamation shall be draw up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-(a)the property to be sold [or, where a part of the property would be sufficient to satisfy the decree, such part] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f 1.2.1977).];(b)the revenue assessed upon the estate, where the property to be sold is an interest in an estate or in part of an



estate paying revenue to the Government;(c)any incumbrance to which the property is liable;(d)the amount for the recovery of which the sale is ordered; and(e)every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:[Provided that where notice of the date for settling the terms of the proclamation has been given to the judgement-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate if any, given, by either or both of the parties.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).](3)Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.(4)For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

High Court Amendments-[Andhra Pradesh].-(1) Re-number the existing clause (e) to sub-rule (2) as (/) and add the following as clause (e):"(e) the value of the property as stated (i) by the decree-holder, and (ii) by the judgment-debtor."(2) In sub-rule (1), for the word "made" substitute the words "drawn up."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-In rule 66, sub-rule (2), re-number clause (e) as clause (f) and insert the following as clause (e):"(e) The value of the property as stated by the decree-holder and the value of the property as stated by the judgment-debtor, and"(2) In the same sub-rule, delete the word "and" occurring at the end of clause (d).-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as Andhra Pradesh (1).[Madhya Pradesh].-Substitute a comma for the full-stop at the end of clause (e) of sub-rule (2), and add the following:"including the decree-holder's estimate of the approximate market price."-(16-9-1960).[Madras].-(i) in sub-rule (1), for the word "made" substitute the words "drawn up."(ii) for sub-rule (2) substitute the following, namely:"(2) The terms of such proclamation shall be settled in Court after notice to the decree-holder and judgment-debtor except in cases where notices have already been served under Order 21, rule 64, and such proclamation shall state the time and place of sale and specify as accurately as possible(a) the property to be sold;(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or part of an estate paying revenue to the Government;(c) any encumbrance to which the property is liable;(d) the amount for the recovery of which the sale is ordered;(e) the value of the property as stated(i) by the decree-holder; and(ii) by the judgment-debtor; and(f) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property."-(10-4-1963).[Patna].-Omit the words "shall be drawn up after notice to the decree-holder and the judgment-debtor and" from sub-rule (2) of rule 66, and add the following proviso after sub-clause (e) of sub-rule (2):"Provided that no estimate of the value of the property, other than those, if any, made by the decree-holder and judgment-debtor respectively together with a statement that the Court does not vouch for the accuracy of either, shall be inserted in the sale

proclamation."[Punjab].-Add the following words to clause (e) of sub-rule (2):"Provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property; but the proclamation shall include the estimate, if any, given by either or both of the parties."After sub-rule (2) of rule 66, add the following as sub-rule (3), and re-number the existing sub-rules (3) and (4) as (4) and (5) respectively :"(3) Where the property to be sold is movable property which has been made over to a custodian under sub-clause (a) or (c) of clause (1) of rule 43 of this Order, the Court shall also issue a process by way of notice to the custodian, directing him to produce the property at the place of sale, at a time to be specified therein with a warning that if he fails to comply with the directions, he shall be liable to action under section 145 of the C.P. Code."

## **67. Mode of making proclamation. -**

(1)Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).(2)Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.(3)Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Add the following as sub-rule (4) to rule 67:"(4) Unless the Court so directs it shall not be necessary to send a copy of the proclamation to the judgment-debtor."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-In rule 67:(i) for the marginal note the following shall be substituted:"Mode of publishing the proclamation of sale" and the words "made and" in sub-rule (1) shall be omitted.(ii) for sub-rule (3) the following sub-rule shall be substituted, namely:"(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to publish the proclamation of sale separately for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given."(iii) after sub-rule (3) the following sub-rule shall be inserted, namely:"(4) Unless the Court so directs it shall not be necessary to send a copy of the proclamation to the judgment-debtor."[Orissa].-Same as that of Patna.[Patna].-Add the following words at the end of sub-rule (1) of rule 67 after deleting the full stop at the end of the sub-rule:"and may, if the Court so directs, on the application of the decree-holder, be proclaimed and published simultaneously with the order of attachment."

## **68. Time of sale. -**

Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least [fifteen days] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72for " thirty days" (w.e.f. 1.2. 1977).] in the case of immovable property, and of at least [seven days] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72for " fifteen days" (w.e.f. 1.2.1977).] in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

## 69. Adjournment or stoppage of sale. -

(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. (2) Where a sale is adjourned under sub-rule (1) for a longer period than [thirty days] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for "seven" (w.e.f. 1.2.1977).] a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it. (3) Every sale be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

High Court Amendments-[Allahabad].-For rule 69 (2), substitute the following:-(2) Where a sale has been once adjourned under sub-rule (1), a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it: Provided that where the adjournment is for a period not longer than thirty days from the date originally fixed for sale, no fresh proclamation shall be necessary: Provided also that the Court may dispense with the consent of any judgment-debtor who has failed to attend in answer to a notice issued under rule 66." [Andhra Pradesh].-Substitute the following for sub-rule (2):-(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, there shall be a fresh publication of the proclamation in the manner prescribed by rule 67, unless the judgment-debtor consents to waive it." [Bombay].-In rule 69 for the existing sub-rule (1) and the marginal note, substitute the following as sub-rule (1) and marginal note [retaining sub-rules (2) and (3) as they are]:- "69. Adjournment or stoppage of sale.-(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale to a specified day and hour, recording his reasons for such adjournment: Provided that, where the sale is made in, or within the precincts of the Court-house, no such adjournment shall be made without the leave of the Court."-(1-10-1983). [Karnataka].-For sub-rule (2) of rule 69 substitute the following sub-rule:-(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days there shall be a fresh publication of the proclamation of sale in the manner prescribed by rule 67 unless the judgment-debtor consent to waive it."-(9-2-1967). [Kerala].-After sub-rule (2) the following shall be added, namely: "Provided that no such fresh proclamation shall be necessary in cases where the sale has been adjourned on account of the absence of the Presiding Judge or on account of the day fixed for the sale being declared a holiday."-(10-3-1964). [Madras].-For sub-rule (2) of rule 69 substitute the following sub-rule:-(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, there shall be fresh publication of the proclamation in the manner prescribed by rule 67, unless the judgment-debtor consents to waive it or the Court otherwise orders."-(13-3-1963).

## 70. [Saving of certain sales.]. -

[Omitted by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), Section 14 (w.e.f. 1.1.1957).]

## **71. Defaulting purchaser answerable for loss on re-sale. -**

Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court [\*\*\*] [The words " or to the Collector or subordinate of the Collector, as the case may be," omitted by Act 66 of 1956, Section 14.] by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

## **72. Decree holder not to bid for or buy property without permission. -**

(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property. (2) Where decree-holder purchases, amount of decree may be taken as payment-Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly. (3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

High Court Amendments-[Allahabad].-In sub-rule (2) for the words "with such permission" read "the property sold" and re-number this sub-rule as rule 72 and delete sub-rules (1) and (3).-(24-7-1926).[Patna].-(i) In rule 72(1) substitute the following for sub-rule (1):"(1) No holder of a decree in execution of which property is sold shall be precluded from bidding for or purchasing the property unless an express order to that effect is made by the Court."(ii) In sub-rule (2) for the words "with such permission" substitute the words "the property".(iii) Substitute the following for sub-rule (3):"(3) Where notwithstanding an order made under sub-rule (1) a decree-holder purchases the property by himself or through another person the Court shall, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the cost of such application and order and any deficiency of price which may happen on the re-sale and all expenses attending it shall be in the discretion of the Court."

## **72A. . [Mortgagee not to bid at sale without the leave of the Court. -**

(1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property. (2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be-(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and (b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage. (3) In other

respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).]

High Court Amendment--[Gujarat].-In Order 21, after the existing rule 72, insert the following rule with marginal note as new rule 72-A and its marginal note:"72-A. Where leave is granted to the mortgagee to bid, a reserve price to be fixed by the Court.-If leave to bid is granted to the mortgagee of immovable property, a reserve price as regards him shall be fixed (unless the Court shall otherwise think fit) at a sum not less than the amount then due for principal, interest and costs in case the property is sold in one lot, and not less in respect of each lot (in case the property is sold in lots), than such figure as shall appear to be properly attributable to it in relation to the amount aforesaid."-(17-8-1961).

### **73. Restriction on bidding or purchase by officers. -**

No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.**Sale Of Movable Property**

### **74. Sale of agricultural produce. -**

(1)Where the property to be sold is agricultural produce, the sale shall be held,-(a)if such produce is a growing crop, on or near the land on which such crop has grown, or(b)if such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.(2)Where, on the produce being put up for sale,-(a)a fair price, in the estimation of the person holding the sale, is not offered for it, and(b)the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till next day or, if a market is held at the place of sale, the next market-day, the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

### **75. Special provisions relating to growing crops. -**

(1)Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.(2)Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-For the existing sub-rule (2), substitute the following as sub-rule (2):"(2) Where the crop from its nature does not admit of being stored, or where it appears to the Court that the crop shall be sold to greater

advantage in an unripe state, it may be sold before, it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it."-(1-10-1983).[Calcutta].-(a) Insert the following words in sub-rule (2), rule 75, Order 21, after the words "where the crop from its nature does not admit of being stored""or can be sold to greater advantage in an unripe state (e.g., as green wheat)."(b) Cancel the word "and" between the words "tending" and "cutting" in sub-rule (2) and substitute therefor the word "or".[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 75 and substitute the following:"75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, unless the Court decides to proceed under the provisions of sub-rule (2) of this rule the day of sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is stored.(2) Where the crop from its nature does not admit of being stored, or can be sold to greater advantage in an unripe state, it may be sold before it is cut and gathered or in such unripe state, and the purchaser shall be entitled to enter on the land and do all that is necessary for the purpose of tending and cutting or gathering the said crop."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-In sub-rule (2) of rule 75, after the words "being stored" insert the words "or, where it appears to the Court that the crop can be sold to greater advantage in an unripe state".-(16-9-1960).[Madras].-Substitute the following for the existing rule:"75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, unless the Court decides to proceed under the provisions of sub-rule (2) hereunder, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.(2) Where the crop from its nature does not admit of being stored, or can be sold to greater advantage in an unripe state, it may be sold before it is cut and gathered or in such unripe state and the purchaser shall be entitled to enter, on the land, and do all that is necessary for the purpose of tending and cutting or gathering it."[Patna].-Substitute the following for rule 75:"75. Where the property to be sold is a growing crop which can be sold to greater advantage in an unripe or unripened state, it may be sold unripened, and the purchaser shall be entitled to enter on the land to do all that is necessary for the purpose of tending and reaping it. In all other cases the day of sale shall be so fixed as to admit of the crop ripening and being reaped before the sale."-(7-1-1936).[Punjab].-In Order 21, rule 75, sub-rule (2) after the word "stored" add the words "or can be sold to greater advantage in an unripe state".

## **76. Negotiable instruments and shares in corporations. -**

Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

## **77. Sale by public auction. -**

(1)Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.(2)On payment of the purchase-money, the officer or other

person holding the sale shall grant a receipt for the same, and the sale shall become absolute.(3)Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a coowner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

## **78. Irregularity not to vitiate sale, but any person injured may sue. -**

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

## **79. Delivery of movable property, debts and shares. -**

(1)Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.(2)Where the property sold is movable property in the possession of some person other than the judgmentdebtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.(3)Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, of prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

## **80. Transfer of negotiable instruments and shares. -**

(1)Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.(2)Such execution or endorsement may be in the following form, namely:-A.B. by C.D. Judge of the Court of (or as the case may be), in a suit by E.F. against A.B.(3)Until the transfer of such negotiable instrument or share, the Court may, by order appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

### **81. Vesting order in case of other property. -**

In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.**Sale Of Immovable Property**

### **82. What Courts may order sales. -**

Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

### **83. Postponement of sale to enable judgment-debtor to raise amount of decree. -**

(1)Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.(2)In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgmentdebtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court:Provided also that not mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.(3)Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

### **84. Deposit by purchaser and re-sale on default. -**

(1)On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent, on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.(2)Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

High Court Amendment-[Allahabad].-Add at the end of sub-rule (2):"The Court shall not dispense with the requirements of this rule in a case in which there is an application for rateable distribution of assets."-(17-1-1953).



## **85. Time for payment in full of purchase-money. -**

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property: Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-For the existing rule 85, substitute the following rule and marginal note:"85. Time for payment in full of purchase money.-The full amount of purchase money payable, together with the amount required for the general stamp paper for the certificate under rule 94, shall be paid by the purchaser into Court before the Court closes on the 15th day from the date of the sale of the property: Provided that, in respect of the purchase-money, the purchaser shall have the advantage of any set-off to which he maybe entitled under rule 72: Provided further that, if as a result of some bona fide mistake or miscalculation the amount deposited falls short of the full amount of the purchase-money, the Court may in its discretion, allow the shortfall to be made up after fifteen days of the sale, and if the full amount of the purchase-money is deposited within such time as the Court may allow, the Court may condone the delay, if it considers it just and proper to do so. Explanation.-When an amount is tendered in Court on any day after 1.00 P.M. but is not accepted by the Court and is paid into Court on the next working day between 11.00 A.M. and 1.00 P.M., the payment shall be deemed to have been made on the day on which the tender is made".-(1-10-1983). '[Kerala].-For rule 85 of Order XXI the following shall be substituted, namely:"85. Time for payment in full of purchase money.-The full amount of purchase-money payable together with the amount required for the general stamp paper for the certificate under rule 94 shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the date of the sale of the property: Provided that, in respect of the purchase-money, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72."-(1-1-1966).[Madhya Pradesh].-Add the following Explanation:"Explanation.-When an amount is tendered on any day after 1 P.M. but paid into Court on the next working day between 11 A.M. and 1. P.M., the payment shall be deemed to have been made on the day on which the tender is made."-(16-9-1960).[Madras].-Substitute the following for the existing rule:"85. Time for payment in full of purchase-money and of stamp for certificate of sale.-The full amount of purchase-money payable and the general stamp for the certificate under rule 94 or the amount required for such stamp, shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property: Provided that in calculating the amount of purchase money to be so deposited, the purchaser, shall have the advantage of any set-off to which he may be entitled-wnd r rule 72."Order 21, Rule 85-A High Court Amendment-[Gujarat].-In Order XXI, after the existing rule 85, insert the following rule with marginal note as new rule 85-A and its marginal note:"85-A. Set-off where execution has been transferred to Collector.-In cases where execution has been transferred to the Collector, for the purposes of rules 84 and 85, the purchaser shall be deemed to be entitled to a set-off under rule 72, if he produces a certificate to that effect from the Court executing the decree."-(17-8-1961).

## **86. Procedure in default of payment. -**

In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

## **87. Notification on re-sale. -**

Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In rule 87, for the words "of the purchase money" substitute the words "of the amounts mentioned in rule 85".-(1-10-1983).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-For the words "of the purchase-money" substitute the words "of the amounts mentioned in rule 85".

## **88. Bid of co-sharer to have preference. -**

Where the property sold is a share of undivided immovable property and two or more persons, or whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

## **89. Application to set aside sale on deposit. -**

(1) Where immovable property has been sold in execution of a decree, [any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).] may apply to have the sale set aside on his deposition in Court, -(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and (b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder. (2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not unless he withdraws his application, be entitled to make or prosecute an application under this rule. (3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-(i) In sub-rule (1), clause (h) for the words "such proclamation:..... decreeholder" substitute "that proclamation of sale, have been paid or deposited towards satisfaction of the decree." (ii) Add proviso as in Madras.[Kerala].-(i) In clause (b) for "date of such proclamation" read "date of the proclamation"; (ii) Insert the following provisos after clause (b): "Provided that, when several items

of properties are sold separately, the sale of one or more of such items may be set aside on depositing in Court the amount of the purchase money for the items the sale of which is sought to be set aside and a sum equal to five per cent. of that amount, and the balance, if any, of the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered still remains unrealised: Provided further that where the immovable property sold is liable to discharge a portion of the decree debt, the payment under clause (b) of this sub-rule need not exceed such amount as under the decree the owner of the property sold is liable to pay." [Madras].-In sub-rule (1), for the words "any person, either owning... before such sale" substitute the words "the judgment-debtor or any person deriving title from the judgment-debtor or any person holding an interest in the property". At the end of sub-rule (1), insert the following proviso: "Provided that where the immovable property sold is liable to discharge a portion of the decree-debt, the payment under clause (b) of this sub-rule need not exceed such amount as under the decree the owner of the property sold is liable to pay."

## **90. [ Application to set aside sale on ground of irregularity or fraud.**

**[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 90 (w.e.f. 1.2.1977).]-**

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conduction it. (2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud. (3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up. Explanation.-There mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.]

High Court Amendments-[Allahabad].-(1) Rule 90 has been re-numbered as sub-rule (1) and the following has been substituted for the proviso, namely: "Provided that no application to set aside a sale shall be entertained (a) upon any ground which could have been taken by the applicant on or before the date on which the sale proclamation was drawn up; and (b) unless the applicant deposits such amount not exceeding twelve and half per, cent. of the sum realized by the sale or furnishes such security as the Court may, in its discretion fix, except when the Court for reasons to be recorded dispenses with the requirements of this clause: Provided further that no sale shall be set aside on the ground of irregularity or fraud unless, upon the facts proved the, Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud." (2) The following has been added as sub-rule (2): "(2) Where such application is rejected, the Court may award such costs to the decree-holder or the auction-purchaser or both as it may deem fit and such costs shall be the first charge upon the security referred to in clause (b) of the proviso, if any." -(1-6-1957). [Andhra Pradesh].-Same as that of Madras. [Calcutta].-Add the following to sub-rule (1): "or on the ground of failure to issue notice to him as required by rule 22 of this Order." Cancel the proviso and substitute as follows: "Provided (i) that no sale shall be set aside on

the ground of such irregularity, fraud or failure unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity, fraud or failure, (ii) that no sale shall be set aside on the ground of any defect in the proclamation of sale at the instance of any person who after notice did not attend at the drawing up of the proclamation or any person in whose presence proclamation was drawn up, unless objection was made by him at the time in respect of the defect relied upon." [Delhi].-Same as that of Punjab. [Gauhati].-Same as that of Calcutta. [Gujarat].-Add the following as additional proviso to sub-rule (1) of rule 90:-"Provided also that no such application for setting aside the sale shall be entertained without the leave of the Court upon any ground which could have been, but was not put forward by the applicant before the commencement of the sale."-(17-8-1961). [Himachal Pradesh].-Same as that of Punjab. [Madhya Pradesh].-After the proviso to sub-rule (1) of rule 90, insert the following further proviso: "Provided also that no such application for setting aside the sale shall be entertained upon any ground which could have been, but was not put forward by the applicant before the commencement of the sale."-(16-9-1960). [Madras].-After the first paragraph and before the present proviso to the rule, insert the following: "Provided that the Court may, after giving notice to the applicant, call upon him before admitting the application, either to furnish security to the satisfaction of the Court for an amount equal to that mentioned in the sale warrant or to that realised by the sale, whichever is less, or to deposit such amount in Court: Provided also that the security furnished or the deposit made as aforesaid shall, be liable to be proceeded against only to the extent of the deficit on a re-sale of the property already brought to sale." In the present proviso after the word "Provided" insert the word "further". [Orissa].-(i) Substitute for the clause (b) of proviso to rule 90: "(b) unless the applicant deposits such amount not exceeding twelve and half per cent. of the sum realised by the sale or such other security as the Court may in its discretion fix, unless the Court, for the reasons to be recorded, dispenses with the deposit." (ii) Add the following as sub-rule (4): "(4) In case the application is unsuccessful the costs of the opposite party shall be a first charge upon the deposit referred to in proviso (i)(b), if any."-(14-5-1984). [Patna].-(1) Substitute the following for the proviso to Rule 90 (1): "(i) provided that no application to set aside a sale shall be admitted (a) upon any ground which could have been, but was not put forward by the applicant before the sale was concluded, and (b) unless the applicant deposits such amount not exceeding 12-1/2 per cent of the sum realised by the sale or such other security as the Court may in its discretion fix, unless the Court, for reasons to be recorded dispenses with the deposit. (ii) Provided further that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud." (2) And add the following as sub-rule (2): "(2) In case the application is unsuccessful the costs of the opposite party shall be a first charge upon the deposit referred to in proviso (i)(b), if any." [Punjab].-Add the following proviso: "Provided further that no such sale shall be set aside on any ground which the applicant could have put forward before the sale was conducted."

## **91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest. -**

The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Order 21, Rule 91-A-High Court Amendment-[Gujarat].-In Order 21, after the existing rule 91, insert the following rule with marginal note as new rule 91-A and its marginal note:"91-A. Deposits how to be made, where execution is transferred to Collector.-When the execution of a decree has been transferred to the Collector and the sale has been conducted by the Collector or by an officer subordinate to the Collector, an application under rule 89, 90 or 91, and in the case of an application under rule 89, the deposit required by that rule, if made to the Collector, or the officer to whom the decree is referred for execution in accordance with any rule framed by the State Government under section 70 of the Code, shall be deemed to have been made to, or in the Court within, the meaning of rules 89, 90 and 91."-(17-8-1961).

## **92. Sale when to become absolute or be set aside. -**

(1)When no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:[Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.] [Added by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within [sixty days] [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 14, for " thirty days" (w.e.f. 1.7.2002).] from the date of sale, [or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " the Court shall make an order setting aside the sale" (w.e.f. 1.2.1977).]:Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.[Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.] [Inserted by the Code of Civil Procedure (Amendment) Act, 2002, Section 14 (w.e.f. 1.7.2002).](3)No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.(4)[ Where a third party challenges the judgment-debtor's title by filing a suit against the auction purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.(5)If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court directs, be revived at the stage at which the sale was ordered.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-In rule 92(1) after the words "the Court shall make" add "subject to the provisions of rule 58(2)".-(24-7-1926).[Andhra Pradesh].-Same as that of Madras.[Bombay].-Add the following proviso at the end of sub-rule (1) of rule 92:"Provided that before confirming the sale the Court shall satisfy itself that the amount paid under rule 85 for the purchase of general stamp paper for the certificate under rule 94 is sufficient for the purpose in accordance with the rate in force at the time of the confirmation and may, notwithstanding

anything contained in rule 86, give the purchaser such time as it thinks fit for making good any deficiency."-(1-10-1983).[Kerala].-(i) In sub-rule (2) after the word "thirty days from the date of sale" insert the following:"and in case where the amount deposited has become deficient owing to any cause not within the control of the depositor such deficiency has been made good within such time as may be fixed by the Court."(ii) In sub-rule (2) of rule 92, for the words "thirty days", substitute "sixty days".-(w.e.f. 9-2-1988).[Madhya Pradesh].-In sub-rule (1) of rule 92, after the word "make" insert the words "subject to the provisions of rule 58(2)".-(16-9-1960).[Madras].-For sub-rule (2) substitute the following:"(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, (and in case where the amount deposited has been diminished owing to any cause not within the control of the depositor such deficiency has been made good within such time as may be fixed by the Court) the Court shall make an order setting aside the sale."[Patna].-Same as that of Allahabad.[N.B.-These High Court Amendments relate to the provisions as existed before the 2002 Amendment Act.]

### **93. Return of purchase-money in certain cases. -**

Where a sale of immovable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

### **94. Certificate to purchaser. -**

Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale of is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

High Court Amendments-[Allahabad].-Re-number the existing rule 94 as sub-rule (1) thereof and the following as sub-rule (2) after the re-numbered rule:"(2) Where immovable property is transferred otherwise than by sale, a document of transfer shall be granted by the Court specifying the property, the name of the person to whom it is transferred and the terms on which the transfer is made. Such document shall bear the date the day on which the transfer was ordered."-(13-2-1960).[Bombay].-For the existing rule 94 and its marginal note, substitute the following as rule 94 and marginal note:"94. Certificate to purchaser.-Where a sale of immovable property has become absolute, the Court shall grant certificate specifying the property sold, the amount of the purchase-money and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date, the day on which the sale became absolute."-(1-10-1983).[Madhya Pradesh].-In rule 94 add a comma after the word "sold" and insert the words "the amount of the purchase-money" between the word "sold" and the word "and".-(18-9-1960).[Orissa].-Same as that of Patna.[Patna].-(i) After the words "has become absolute" insert the words "the auction-purchaser shall file the sale certificate stamp within fifteen days from the date of the confirmation of sale and".(ii) At the end of the rule add "If the necessary stamp for the sale certificate is not filed within the prescribed period the sale may, if the Court thinks fit, be set aside".

## **95. Delivery of property in occupancy of judgment-debtor. -**

Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order to delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

High Court Amendment-[Madras].-Rule 95 shall be re-numbered as sub-rule (1) thereof that rule, and to the rule as so re-numbered, the following sub-rule shall be added, namely: "(2) Where delivery of possession of a house is to be given and it is found to be locked, orders of Court shall be taken for breaking open the lock and for delivery of possession of the same to the purchaser. If it is found at the time of delivery, that there are movables, in the house to which the purchaser has no claim and the judgment-debtor is absent or, if present, does not immediately remove the same, the Officer entrusted with the warrant for delivery shall make an inventory of the articles so found with their probable value in the presence of respectable persons on the spot, have the same attested by them and leave the movables in the custody of the purchaser after taking a bond from him for keeping the articles in safe custody pending orders of Court for disposal of the same. The Officer shall then make a report to the Court and forward therewith the attested inventory taken by him. The Court shall thereupon issue a notice to the judgment-debtor requiring him to take delivery of the said movables within thirty days from the date of the notice, and, in default they will be sold in public auction at his risk and the proceeds applied for meeting all legitimate expenses of custody and sale and the balance, if any, will be refunded to the judgment-debtor: Provided that, if movable articles referred to above are perishable, the officer shall sell them in public auction immediately and bring the proceeds into Court. The notice to the judgment-debtor shall in such case call upon him to receive the amount from Court within three months."-(17-8-1966).

## **96. Delivery of property in occupancy of tenant. -**

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Order 21, Rule 96-A-High Court Amendment-[Allahabad].-Insert the following as rule 96-A: "96-A. (1) The Court executing a decree may, of its own motion or on application and on such terms as may appear to it just and reasonable in the circumstances of the case and as are acceptable to the transferee, order that any property of the judgment-debtor attached by it, be transferred otherwise than by sale in favour of the decree-holder or any other person not a party to the decree, for the purpose of satisfying the decree or a portion thereof. (2) The provisions of rules 64 to 103 of this Order shall apply mutatis mutandis to a transfer other than sale made under this rule except that

the Court may in its discretion dispense with the necessity of such transfer being made after issuing a proclamation or of the transfer being conducted by an officer of the Court or by public auction or after issuing a proclamation."-(5-1-1960).

Resistance To Delivery Of Possession To Decree-Holder Or Purchaser

## **97. Resistance or obstruction to possession of immovable property. -**

(1)Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.(2)[ Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for sub.rule (2) (w.e.f. 1.2.1977).]

## **98. [ Orders after adjudication. [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rules 98 to 103 (w.e.f. 1-2-1977).]-**

(1)Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-(a)make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

High Court Amendment-[Patna].-Add the following as sub-rule (3) to rule 97:"(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to the applications under this rule."

(b)pass such other order as, in the circumstances of the case, it may deem fit.(2)Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.]

High Court Amendment-[Bombay].-Substitute the following sub-rule (2), for the existing sub-rule (2) of rule 98 in Order XXI:"(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days. The Court may also order the person or persons whom it holds responsible for such resistance or obstruction to pay jointly or severally in addition to costs, reasonable compensation to the decree-holder or the purchaser, as the case may be, for the delay



and expenses caused to him in obtaining possession. Any order made under this rule shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree."-(1-10-1983).High Court Amendment-[Bombay].- Add the following proviso to rule 100:-"Where it is determined that the application is made by person to whom the judgmentdebtor has transferred the property after the institution of the suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a) above."-(1-10-1983).

### **99. [ Dispossession by decree-holder or purchaser. -**

(1)Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.(2)Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

### **100. Order to be passed upon application complaining of dispossession. -**

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-(a)make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or(b)pass such other order as, in the circumstances of the case, it may deem fit.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for former rules 99 and 100 (w.e.f. 1.2.1977).]

High Court Amendment-[Bombay].-Add the following proviso to rule 101 of Order XXI:"Provided that when the Court is not competent to decide such question due to want of pecuniary jurisdiction the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge, shall deal with it in the same manner as if the case had been originally instituted in that Court."(1-10-1983).

### **101. [ Question to be determined. -**

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for former rule 101 (w.e.f. 1.2.1977).]

High Court Amendment-[Bombay].-Delete rule 102.-(1-10-1983).

## **102. [ Rules not applicable to transferee BIpendent lite. -**

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. Explanation.-In this rule, "transfer" includes a transfer by operation of law.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for former rule 102 (w.e.f. 1.2.1977).]

## **103. Orders to be treated as decrees.—**

Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

## **104. [ Order under rule 101 or rule 103 to be subject to the result or pending suit. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

## **105. Hearing of application. -**

(1)The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.(2)Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.(3)Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit. Explanation.-An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

High Court Amendment-[Madras].-(i) In sub-rule (3) insert the following proviso, namely:"Provided that an application may be admitted after the said period of thirty days if the applicant satisfies the Court that he had sufficient cause for not making the application within such period."(ii) for sub-rule (4), substitute the following sub-rule (4), namely:"The provisions of section 5 of the Limitation Act, 1908, shall apply to applications under sub-rule (1)."

## 106. Setting aside order passed *Blex parte*, etc.. -

(1)The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.(2)No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.(3)An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an *ex parte* order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.]

Order 21, Rules 106-A to 140High Court Amendment-[Allahabad].-Add the following rules to Order 21:-  
 \*106-A. When the certificate prescribed by section 41 is received by the Court which sent the decree for execution, it shall cause the necessary details as to the result of execution to be entered in its register of civil suits before the papers are transmitted to the record room.  
 \*106-B. Every attachment of movable property under rule 43, of negotiable instruments under rule 51, and of immovable property under rule 54, shall be made through a Civil Court Amin, or Bailiff, unless special reasons render it necessary that any other agency should be employed; in which case those reasons shall be stated in the handwriting of the presiding Judge himself in the order for attachment.  
 \*106-C. When the property which it is sought to bring to sale is immovable property within the definition of the same contained in the law for the time being in force relating to the registration of documents, the decree-holder shall file with his application for an order for sale a certificate from the Sub-Registrar within whose sub-district such proper}' is situated, showing that the Sub-Registrar has searched his Book Nos. I and II and their indices for the twelve years preceding the mortgage or attachment, as the case may be, and stating the encumbrances, if any, which he has found on the property.-(22-7-1918 and 5-6-1937).  
 107. When an application is made for the sale of land or of any interest in land, the Court shall, before ordering sale thereof, call upon the parties to state whether such land is or is not ancestral land within the meaning of Notification No. 1887-1-238-10, dated 7th October, 1911, of the Local Government, and shall fix a date for determining the said question.On the day so fixed, or on any date to which the enquiry may have been adjourned, the Court may take such evidence, by affidavit or otherwise, as it may deem necessary; and may also call for a report from the Collector of the District as to whether such land or any portion thereof is ancestral land.After considering the evidence and the report, if any, the Court shall determine whether such land, or any, and what part of it, is ancestral land.The result of the enquiry shall be noted in an order made for the purpose by the presiding Judge in his own handwriting.  
 108. When the property which it is sought to bring to sale is revenue-paying or revenue-free land or any interest in such land, and the decree is not sent to the Collector for execution under section 68, the Court, before ordering sale, shall also call upon the Collector in whose district such property is situate to report whether the property is subject to any (and, if so, to what) outstanding claims on the part of Government.  
 109. The certificate of the Sub-Registrar and the report of the Collector shall be open to the inspection of the parties or their pleaders, free of charge, between the time of the receipt by the Court and the declaration of the result of the

enquiry. No fees are payable in respect of the report by Collector. 110. The result of the enquiry under rule 66 shall be noted in an order made for the purpose by the presiding Judge in his own handwriting. The Court may, in its discretion, adjourn the inquiry, provided that the reasons for the adjournment are stated in writing, and that no more adjournments are made than are necessary for the purposes of the enquiry. 111. If after proclamation of the intended sale has been made, any matter is brought to the notice of the Court which it considers material for purchasers to know, the Court shall cause the same to be notified to intending purchasers when the property is put up for sale. 112. The costs of the proceedings under rules 66, 106 and 108 shall be paid in the first instance by the decree-holder; but they shall be charged as part of the costs of the execution, unless the Court, for reasons to be specified in writing, shall consider that they shall either wholly or in part be omitted therefrom. 113. Whenever any Civil Court has sold, in execution of a decree or other order, any house or other building situated within the limits of a Military cantonment or station, it shall, as soon as the sale has been confirmed, forward to the Commanding Officer of such cantonment or station for his information and for record in the Brigade or other proper office, a written notice that such sale has taken place; and such notice shall contain full particulars of the property sold and the name and address of the purchaser.-(22-5-1915). 114. Whenever guns or other arms in respect of which licences have to be taken by purchasers under the Indian Arms Act (XI of 1878) are sold by public auction in execution of decrees by order of a Civil Court, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers, and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Indian Arms Act. 115. When an application is made for the attachment of live.,tock or other movable property, the decree-holder shall pay into Court in cash such sum as will cover the costs of the maintenance and custody of the property for fifteen days. If within three clear days before the expiry of any such period of fifteen days, the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.-(22-5-1915). 116. Livestock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment-debtor on his furnishing security, or in that of some land-holder or other respectable person willing to undertake the responsibility of its custody and to produce it when required by the Court.-(22-5-1915). 117. If the custody of livestock cannot be provided for in the manner described in the last preceding rule, the animals attached shall be removed to the nearest pound established under the Cattle Trespass Act, 1871, and committed to the custody of the pound-keeper, who shall enter in a register-(a) the number and description of the animals; (b) the day and hour on and at which they were committed to his custody; (c) the name of the attaching officer or his subordinate by whom they were committed to his custody; and shall give such attaching officer or subordinate a copy of the entry.-(22-5-1915). 118. For every animal committed to the custody of the pound-keeper as aforesaid, a charge shall be levied as rent for the use of the pound for each fifteen or part of fifteen days during which such custody continues, according to the scale prescribed under section 12 of Act 1 of 1871.-(22-5-1915). And the sums so levied shall be sent to the Municipal or District Board, or the Notified area, as the case may be under whose jurisdiction the pound is.-(21-11-1942). 119. The pound-keeper shall take charge of, feed and water animals attached and committed as aforesaid, until they are withdrawn from his custody as hereinafter provided and he shall be entitled to be

paid for their maintenance at such rates as may be, from time to time, prescribed under proper authority. Such rates shall, for animals specified in the section mentioned in the last preceding rule, not exceed the rates for the time being fixed under section 5 of the same Act. In any case, for special reasons to be recorded in writing, the Court may require payment to be made for maintenance at higher rates than those prescribed.-(22-5-1915).120. The charges herein authorised for the maintenance of livestock shall be paid to the pound-keeper by the attaching officer for the first fifteen days at the time the animals are committed to his custody, and thereafter for such further period as the Court may direct, at the commencement of such period. Payments for such maintenance so made in excess of the sum due for the number of days during which the animals may be in the custody of the pound-keeper shall be refunded by him to the attaching officer.-(22-5-1915).121. Animals attached and committed as aforesaid shall not be released from custody by the pound-keeper except on the written order of the Court, or of the attaching officer, or of the officer appointed to conduct the sale; the person receiving the animals, on their being so released, shall sign a receipt for them in the register mentioned in rule 117.-(22-5-1915).122. For the safe custody of movable property other than livestock, while under attachment, the attaching officer shall, subject to approval by the Court, make such arrangement as may be most convenient and economical.-(22-5-1915).123. With the permission of the Court the attaching officer may place one or more persons in special charge of such property.-(22-5-1915).124. The fee for the services of each such person shall be payable in the manner prescribed in rule 115. It shall not be less than twenty-five naye paise, and shall ordinarily not be more than thirty-seven naye paise per diem. The Court may, at its discretion, allow a higher-fee; but if it does so, it shall state in writing its reasons for allowing an exceptional rate.-(22-5-1915).125. When the services of such person are no longer required, the attaching officer shall give him a certificate on a counterfoil form of the number of days he has served and of the amount due to him; and on the presentation of such certificate to the Court which ordered the attachment, the amount shall be paid to him in the presence of the presiding Judge: Provided that, where the amount does not exceed Rs. 5, it may be paid to the sahana by money order on requisition by the Amin, and the presentation of the certificate may be dispensed with.-(1-3-1913).126. When in consequence of an order of attachment being withdrawn or for some other reason, the person has not been employed or has remained in charge of the property for a shorter time than that for which payment has been made in respect of his services, the fee paid shall be refunded in whole or in part, as the case may be.-(22-5-1915).127. Fees paid into Court under the foregoing rules shall be entered in the Register of Petty Receipts and Repayments.-(22-5-1915).128. When any sum levied under rule 118 is remitted to the Treasury, it shall be accompanied by an order in triplicate (in the form given as Form 9 of the Municipal Account Code), of which one part will be forwarded by the Treasury Officials to the District or Municipal Board, as the case maybe. A note that the same has been paid into the Treasury as rent for the use of the pound, will be recorded on the extract from the pass book.-(22-5-1915).129. The cost of preparing attached property for sale, or of conveying it to the place where it is to be kept or sold, shall be payable by the decree-holder to the attaching officer. In the event of the decree-holder failing to provide the necessary funds, the attaching officer shall report his default to the Court, and the Court may thereupon issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.-(22-5-1915).130. Nothing in these rules shall be deemed to prevent the Court from issuing and serving on the judgment-debtor simultaneously the notices required by Order 21, rules 22, 66 and 107.-(24-3-1923). Garnishee Orders131. The Court may, in

the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument, or a debt recoverable only in a Revenue Court), or any movable property not in the possession of the judgmentdebtor, which has been attached under rule 46 of this Order, issue a notice to any person (hereinafter called the garnishee) liable to pay such debt, or to deliver or account for such movable property calling upon him to appear before the Court and show cause why he should not pay or deliver into Court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the cost of the execution.-(24-7-1926 and 30-4-1949).(For form of notice under this rule, see infra].The following form shall be used under the provisions of rule 131 of Order 21:-Suit No ..... of 20 .....

Plaintiffversus.....

DefendantToWhereas it is alleged that a debt of Rs.....is due from you to....the

judgment-debtor:Or that you are liable to deliver to the above-named judgment-debtor, the property set forth in the Schedule hereto attached; take notice that you are hereby required on or before the day of...20...to pay into this Court the said sum of Rs.....Or to deliver, or account to the Amin of this Court for the movable property detailed in the attached Schedule or otherwise to appear in person or by advocate, vakil or authorised agent in this Court at 10.30 in the forenoon of the day aforesaid and show cause to the contrary, in default whether an order for the payment of the said sum, or for the delivery of the said property may be passed against you.Dated this

..... day of ..... 20 ...Munsiff/Subordinate Judge,at.....132. If the garnishee does not forthwith or within such time as the Court may allow, pay or deliver into Court the amount due from or the property deliverable by him to the judgment-debtor, or so much as may be sufficient to satisfy the decree and the cost of execution, and does not dispute his liability to pay such debt or deliver such movable property, or if he does not appear in answer to the notice, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.-(24-7-1926).133. If the garnishee disputes his liability the Court, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon determination of such issue shall pass such order as shall be just.-(24-7-1926).134. Whenever in any proceedings under these rules it is alleged, or appears to the Court to be probable, that the debt or property attached belongs to some third person or that any third person has a lien or charge upon, or an interest in it, the Court may order such third person to appear and state the nature of his claim, if any, upon such debt or property and prove the same, if necessary.-(24-7-1926).135.

After hearing such third person, and any other person, who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered, the Court may pass such order as is hereinbefore provided or make such other order as it shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as to such Court shall seem just and reasonable.-(24-7-1926).136. Payment or delivery made by the garnishee whether in execution of an order under these rules or otherwise shall be a valid discharge to him as against the judgment-debtor, or any other person ordered to appear as aforesaid, for the amount paid, delivered or realised although such order or the judgment may be set aside or reversed.-(24-7-1926).137. Debts owing from a firm carrying on business within the jurisdiction of the Court may be attached under these rules, although one or more members of such firm may be resident out of the jurisdiction:Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee

order. An appearance by any member pursuant to an order shall be sufficient appearance by the firm.-(24-7-1926).138. The cost of any application under these rules, and of any proceedings arising therefrom or incidental thereto, or any order made thereon, shall be in the discretion of the Court.-(24-7-1926).139. (1) Where the liability of any garnishee has been tried and determined under these rules, the order shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.(2) Orders not covered by clause (1) shall be appealable as orders made in execution.Illustration.-An application for a garnishee order is dismissed either on the ground that the debt is secured by a charge or that there is no prima facie evidence of debt due. This order is appealable as an order in execution.-(24-7-1926).140. All the rules in this Code relating to service upon either plaintiffs or defendants at the address filed or subsequently altered under Order 7 or Order 8, shall apply to all proceedings taken under Order 21, or section 47."-(24-7-1926).The following form shall be used under the provisions of rule 131 of Order 21:Suit No ..... of 20

.....Plaintiffversus.....

DefendantToWhereas it is alleged that a debt of Rs..... is due from you to....the judgment-debtor:Or that you are liable to deliver to the abovementioned judgment-debtor the property set forth in the Schedule hereto attached:Take notice that you are hereby required on or before the....day of....20....to pay into this Court the said sum of Rs..... or to deliver, or account to the Amin of this Court for the movable property detailed in the attached schedule, or otherwise to appear in person or by advocate, vakil or authorised agent in this Court at 10.30 in the forenoon of the day aforesaid and show cause to the contrary, in default whereof an order for the payment of the said sum, or for the delivery of the said property may be passed against you.Dated this ..... day of ..... 20....Munsiff/Sub-Judgeat .....[Andhra Pradesh].-Add the following as sub-rule (4) after sub-rule (3) of rule 106:-"(4) The provisions of section 5 Limitation Act, 1963 shall apply to all applications under sub-rule (3)."(20-1-1992).Order21-A[Calcutta].-Insert the following as Order 21-A:"ORDER 21-A1. Every person applying to a Civil Court to attach movable property shall, in addition to the process-fee, deposit such reasonable sum as the Court may direct, if it thinks necessary for the cost of its removal to the Court-house, for its custody, and if such property is livestock, for its maintenance according to the rates prescribed in rule 2 of this order. If the deposit, when ordered, be not made, the attachment shall not issue. The Court may, fromtime to time, order the deposit of such further fees as may be necessary. In default of due payment the property shall be released from attachment.2. The following daily rates shall be chargeable for the custody and maintenance of livestock under attachment:TABLEExplanation.-Although the rates indicated above are regarded as reasonable, the Courts should consider individual circumstances and the local conditions and permit deposit at reduced rates where the actual expenses are likely to fall short of the minima or maxima. If any specimen of special value in any of the above classes is seized, a special rate may be fixed by the Court. If any animal not specified is attached, the Court may fix the cost as a special case.3. Where the property attached consists of agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, Order 21, he may, unless the Court has otherwise directed, leave it in the village or place where it has been attached(a) in the charge of the decree-holder or his agent or of the judgment-debtor, or some other person, provided that the decree-holder or his agent or the judgment-debtor or other person enters into a bond in Form No. 15-A of Appendix E to this Schedule, with one or more

sureties, to produce the attached property when called for and to be liable for any loss which the owner of the property attached may suffer due to wilful negligence of the bounden, or(b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of fifteen days paid in advance.4. If attached property (other than livestock) is not sold under the proviso to rule 43 of Order 21, or retained in the village or place where it is attached, it shall be brought to the Court-house at the decree-holder's expense and delivered to the proper officer of u, Court. In the event of the decree-holder failing to make his own arrangement for the removal of the property with safety, or paying the cost thereof in advance to the attaching officer, then, unless such payment has previously been made into Court, the attachment shall at once be deemed to be withdrawn and the property shall be made over to the person in whose possession it was before attachment.5. When livestock is attached, it shall not, without the special order of the Court, be brought to the Court or its compound or vicinity, but shall be left at the village or place where it was attached in the manner and on the conditions set forth in rule 3 of this Order:Provided that livestock shall not be left in the charge of any person under clause (a) of the said rule unless he enters into a bond for the proper care and maintenance thereof as well as for its production when called for, and that it shall not be left in charge of an officer of the Court under clause (b) of the said rule unless in addition to the requirements of the said clause provisions be made for its care and maintenance.6. When for any reason, the attaching officer, shall find it impossible to obtain compliance with the requirements of the preceding rule so as to entitle him to leave the attached livestock in the village or place where it was attached and no order has been made by the Court for its removal to the Court, the attaching officer shall not proceed with the attachment and no attachment shall be deemed to have been effected.7. Whenever it shall appear to the Court that livestock under attachment are not being properly tendered or maintained, the Court shall make such orders, as are necessary for their care and maintenance and may, if necessary, direct the attachment to cease and the livestock to be returned to the person in whose possession they were when attached. The Court may order the decree-holder to pay any expenses so incurred in providing for the care and maintenance of the livestock and may direct that any sum so paid, shall be refunded to the decree-holder by any other party to the proceedings.8. If under a special order of the Court livestock is to be conveyed to the Court, the decree-holder shall make his own arrangement for such removal and if he fails to do so, the attachment shall be withdrawn and the property made over to the person in whose possession it was before attachment.9. Nothing in these rules shall prevent the judgment-debtor or any person, claiming to be interested in attached livestock from making such arrangements for feeding, watering and tending the same as may not be inconsistent with its safe custody, or contrary to any order of the Court.10. The Court may direct that any sums which have been legitimately expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the sale proceeds of the attached property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings.11. In the event of the custodian of attached property failing, after due notice, to produce such property at the place named to the officer deputed for the purpose, or to restore it to its owner if so ordered or failing in the case of livestock to maintain and take proper care thereof, he shall be liable to be proceeded against for the enforcement of his bond in the execution proceedings.12. When property other than livestock is brought to the Court, it shall immediately be made over to the Nazir, who shall keep it on his sole responsibility in such place as



may be approved by the Court. If the property cannot from its nature or bulk be conveniently stored, or kept on the Court premises or in the personal custody of the Nazir, he may, subject to the approval of the Court, make such arrangements for its safe custody under his own supervision may be most convenient and economical. If any premises are to be hired and persons are to be engaged for watching the property, the Court shall fix the charges for the premises and the remuneration to be allowed to the persons (not being officers of the Court) in whose custody the property is kept. All such costs shall be paid into Court by the decree-holder in advance for such period as the Court may from time to time direct.<sup>13</sup> When attached livestock is brought to Court under special order as aforesaid it shall be immediately made over to the Nazir, who shall be responsible for its due preservation and safe custody until he delivers it up under the orders of the Court.<sup>14</sup> If there be a pound maintained by Government or local authority in or near the place where the Court is held, the Nazir shall, subject to the approval of the Court, be at liberty to place in it such livestock as can be properly kept there, in which case the pound-keeper will be responsible for the property to the Nazir and shall receive from the Nazir the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.<sup>15</sup> If there be no good pound available, or, if in the opinion of the Court, it be inconvenient to lodge the attached livestock in the pound, the Nazir may keep them in his own premises or he may entrust them to any person selected by himself and approved by the Court.<sup>16</sup> All costs for the keeping and maintenance of the livestock shall be paid into Court by the decree-holder in advance for not less than fifteen days at a time as often as the Court may from time to time direct. In the event of failure to pay the costs within the time fixed by the Court, the attachment shall be withdrawn and the livestock shall be at the disposal of the person in whose possession it was at the time of attachment.<sup>17</sup> So much of any sum deposited or paid into Court under these rules as may not be expended shall be refunded to the depositor."-(3-11-1933).[Gauhati].-Same as that of Calcutta.

## **Order – XXII**

### **Death, Marriage, Insolvency or Parties**

#### **1. No abatement by party's death if right to sue survives. -**

The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

High Court Amendment-[Allahabad].-At the end of the rule 1 add the following:-"or to proceedings in the original Court taken after the passing of the preliminary decree where a final decree also requires to be passed having regard to the nature of the suit."

#### **2. Procedure where one of several plaintiffs or defendants dies and right to sue survives. -**

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

High Court Amendment-[Punjab, Haryana and Chandigarh].-After the existing rule 2 insert the following, namely:"2-A. Every advocate appearing in a case who becomes aware of the death of a party to the litigation (whether he appeared for him or not) must give intimation about the death of that party to the Court and to the person who is dominus Ijtis.2-B. The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is dominos litis."

### **3. Procedure in case of death of one of several plaintiffs or of sole plaintiff. -**

(1)Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.(2)Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

High Court Amendment-[Punjab, Haryana and Chandigarh].-For existing sub-rule (2) of rule 3, substitute the following:-"Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist."-(Notification No. GSR 14/C.A. 5/1908/S.122/92, dated 21-2-1992).

### **4. Procedure in case of death of one of several defendants or of sole defendant. -**

(1)Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.(2)Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.(3)Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.(4)[ The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.(5)Where-(a)the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963) and the suit has, in consequence, abated, and(b)the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the

abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).]

High Court Amendment-[Punjab, Haryana and Chandigarh].-(i) In rule 4, sub-rule(3) shall be substituted as follows:"(3) Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."(ii) In rule 4 the following shall be inserted as sub-rules (4), (5) and (6), namely:"(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.(5) Before setting aside the decree under sub-rule (4) the Court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.(6) The provisions of section 5 of the Limitation Act, 1963 shall apply to applications under sub-rule (4)."- (11-4-1975).

#### **4A. . [Procedure where there is no legal representative. -**

(1)If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.(2)Before making an order under this rule, the Court-(a)may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and(b)shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.][ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1976).]

#### **5. Determination of question as to legal representative. -**

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1976).]

## **6. No abatement by reason of death after hearing. -**

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

## **7. Suit not abated by marriage of female party. -**

(1)The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.(2)Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree.

## **8. When plaintiffs insolvency bars suit. -**

(1)The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.(2)Procedure where assignee fails to continue suit, or give security.-Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has insured in defending the same to be proved as a debt against the plaintiff's estate.

## **9. Effect of abatement or dismissal. -**

(1)Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.(2)The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.(3)The provisions of section 5 of the [Indian Limitation Act, 1877 (15 of 1877)] [See now the Limitation Act, 1963 (36 of 1963), bs. 4 and 5.] shall apply to applications under sub-rule (2).[Explanation. -Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **10. Procedure in case of assignment before final order in suit. -**

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1). [10A . Duty or pleader to communicate to Court death of a party. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1976).]- Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]

## **11. Application of Order to appeals. -**

In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

High Court Amendments-[Calcutta].-Add the following proviso:"Provided always that where an Appellate Court has made an order dispensing with service of notice of appeal upon legal representatives of any person deceased, under Order 41, rule 14(3), the appeal shall not be deemed to abate as against such party and the decree made on appeal shall be binding on the estate or the interest of such party." [Gauhati].-Same as that of Calcutta. Order 22, Rule 11-A High Court Amendments-[Andhra Pradesh].-Same as that of Madras. [Kerala].-After rule 11, the following rule shall be added, namely:"11-A. Entry on the record of the name of the representative of a deceased appellant or respondent in a matter pending before the High Court.-The entry on the record of the name of the representative of a deceased appellant or respondent in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the Supreme Court may be performed by the Registrar, provided that contested applications and applications presented out of time shall be posted before a Judge for disposal."-(9-6-1959). [Madras].-After rule 11, add the following as rule 11-A:"11-A. The entry on the record of the name of the representative of a deceased appellant or respondent in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the Supreme Court, shall be deemed to be a quasi-judicial act within the meaning of section 128(2)(i) of the Code of Civil Procedure and may be performed by the Registrar, provided that contested applications and application presented out of time shall be posted before a Judge for disposal."-(28-5-1958).

## **12. Application of Order to proceedings. -**

Nothing in rules 3, 4 and 8 shall apply to proceedings in executive of a decree or order.

High Court Amendments-[Allahabad].-At the end of rule 12, add:-"or to proceedings in the original Court taken after the passing of the preliminary decree where a final decree also requires to be passed having regard to the nature of the suit."-(7-2-1931). [Orissa].-Add at the end before the period:-"Or to proceedings in the original Court taken after the passing of the preliminary decree

where having regard to the nature of the suit, a final decree is required to be passed."-(7-5-1954).

## Order – XXIII

### WITHDRAWAL AND ADJUSTMENT OF SUITS

#### 1. [ Withdrawal of suit or abandonment of part of claim.-

(1)At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.(2)An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.(3)Where the Court is satisfied,-(a)that a suit must fail by reason of some formal defect, or(b)that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.(4)Where the plaintiff-(a)abandons any suit or part of claim under sub-rule (1), or(b)withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.(5)Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.][Substituted bs. by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 1 (w.e.f. 1.2.1976).]

High Court Amendments-[Karnataka].-In rule 1 add the following as sub-rule (5):-"(5) Where the plaintiff in a suit instituted or conducted under the provisions of rule 8of Order 1 of this Code or all plaintiffs therein if there are more plaintiffs than one, apply for permission to withdraw the suit, notice of such application shall be given in the manner prescribed by sub-rule (3) of rule 8 of Order 1 of this Code for issue of notice of institution of the suit, and the cost of such notice shall be borne by the plaintiff or the plaintiffs, as the case may be. If upon such application being made a defendant in the same suit having the same interest as that of the plaintiffs applies for permission to be transposed as plaintiff to conduct the suit further, he shall be permitted to do so and the plaintiffs' application dismissed.-(R.O.C. No. 2529 /1959, dated 9-2-1967).[Orissa].-In sub-rule (1) after the words "At any time after the institution of a suit" and preceding the words "the plaintiff" insert "but not after the passing of the preliminary decree in the suit".-(7-5-1954).

## **1A. When transposition of defendants as plaintiffs may be permitted.-**

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

## **2. Limitation law not affected by first suit. -**

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

## **3. Compromise of suit. -**

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, Section 74 (w.e.f. 1.2.1977).] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:] [Substituted by for certain words (w.e.f. 1.2.1977).][Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, Section 74 (w.e.f. 1.2.1976).][Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, Section 74 (w.e.f. 1.2.1976).]

High Court Amendments-[Allahabad].-(1) In rule 3, between the words "or compromise" and "or where", insert the words "in writing duly signed by the parties"; and between the words "subject-matter of the suit" and the words "the Court", insert the words "and obtains an instrument in writing duly signed by the plaintiff".(2) At the end of the rule 3, add the following:"Provided that the provisions of this rule shall not apply to or in any way affect the provisions of Order XXXIV, rules 3,5 and 8.Explanation.-The expressions "agreement" and "compromise", include a joint statement of the parties concerned or their Counsel recorded by the Court, and the expression "instrument" includes a statement of the plaintiff or his Counsel recorded by the Court." -(w.e.f. 31-8-1974).[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Renumber existing rule 3 as rule 3 (1) and add the following as sub-rule (2):"(2) Where any such agreement or compromise as is referred to in sub-rule (1) is placed before the Court by a party suing or defending in a representative capacity in a suit, instituted, conducted

or defended under the provisions of rule 8 of Order 1 of this Code, the Court shall not proceed with the consideration of the same or to pass a decree in accordance therewith without first giving notice of the application for recording such agreement or compromise in the manner prescribed in sub-rule (1) of Rule 8 of Order 1 of this Code for giving notice of the institution of such suit. The expenses of giving such notice shall be borne by such party or parties as the Court may direct."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madras].-In the proviso to Rule 3, for the words "Provided that" substitute the following:"Provided that the subject-matter of the agreement, compromise or satisfaction, in so far as it differs from the subject-matter of the suit, is within the territorial and pecuniary jurisdiction of the Court concerned:Provided further that."-(w.e.f. 23-1-1981).[Punjab, Haryana and Chandigarh].-Add the following provisos to rule 3:-"Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purpose of deciding whether there has been any adjustment or satisfaction, unless the Court for reasons to be recorded in writing, thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided:Provided further that when an application is made by all the parties to the suit, either in writing or in open Court through their Counsel, that they wish to compromise the suit, the Court may fix a date on which the parties or their Counsel should appear and the compromise be recorded, but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the Court, for reasons to be recorded in writing, considers it highly probable that the suit will be compromised on or before the date to which the Court proposes to adjourn the hearing."

### **3A. Bar to suit. -**

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

### **3B. No agreement or compromise to be entered in a representative suit without leave of Court.-**

(1)no agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.(2)Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.Explanation.-In this rule, "representative suit" means,-(a)a suit under section 91 or section 92,(b)a suit under rule 8 of Order I,(c)a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,(d)any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.]



#### **4. Proceeding in execution of decrees not affected. -**

Nothing in this Order shall apply to any proceedings in execution of a decree or order.

### **Order – XXIV**

#### **PAYMENT INTO COURT**

##### **1. Deposit by defendant of amount in satisfaction of claim. -**

The defendant in any suit to recover a debt or damage may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

##### **2. Notice of deposit. -**

Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

##### **3. Interest on deposit not allowed to plaintiff after notice. -**

No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

##### **4. Procedure where plaintiff accepts deposit as satisfaction in part. -**

(1) Where the plaintiff accepts such amount as satisfaction in part only of his claim he may prosecute suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim. (2) Procedure where he accepts it as satisfaction in full—Where the plaintiff accepts such amount as satisfaction in full of his claim he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation. Illustrations (a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court, B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part. (b) B sues A under the circumstance mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his cost of suit. A's conduct having shown that the litigation was necessary. (c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100

into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

## Order – XXV

### SECURITY FOR COSTS

#### 1. When security for costs may be required from plaintiff. -

(1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded to give with in the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant: Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiff are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property with India other than the property in suit. (2) Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1). [Inserted by Act 104 of 1976, (w.e.f. 1.2.1977)]

High Court Amendments-[Allahabad].-In Order XXV, for the existing rule 1, the following rule shall be substituted: "1. When security for costs may be required from plaintiff.-(1) At any stage of the suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff for reasons to be recorded to give within the time fixed by it, security for the payment of all costs incurred and likely to be incurred by any defendant: Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing outside the State and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within the State other than the property in suit or that the plaintiff is being financed by another person. (2) Whoever leaves that State under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing outside the State within the meaning of the proviso to sub-rule (1)."- (w.e.f. 5-2-1983). [Andhra Pradesh].-Same as that of Madras. [Madhya Pradesh].-Insert "or that any plaintiff is being financed by a person not a party to the suit" at the end of the proviso to sub-rule (1).-(16-9-1960). [Madras].-The following shall be inserted as sub-rule (4): "(4) In all cases in which an element of champerty or maintenanc<sup>o</sup> is proved, the Court may, on the application of the defendant, demand security for the estimated amount of the defendant's costs, or such proportion thereof, as from time to time during the progress of the suit, the Court..tay think just." (This amendment was made before the present rule was substituted). [Orissa].-In Order 25, rule 1-(a) Substitute sub-rule (3) by the following: "(3) On the application of a defendant in any suit the Court may at any stage of the suit make a like order if it is satisfied that the plaintiff does not possess any sufficient immovable property within the Union of India." (b) Insert the following as sub-rule (4): "(4) On being satisfied that there is an element of champerty or maintenance, the Court may on

the application of the defendant order a plaintiff to furnish security for the entire estimated amount of the defendant's costs or a portion thereof, from time to time, as the Court may consider just and proper."-(7-5-1954).

## **2. Effect of failure to furnish security. -**

(1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom. (2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. (3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

High Court Amendments-[Bombay].-In Order XXV, after Rule 2, add the following as new rule:"3. Power to implead and demand security from third person financing litigation.-(1) Where any plaintiff has for the purpose of being financed in the suit transferred or agreed to transfer any share or interest in the property in the suit to a person who is not already a party to the suit, the Court may order such person to be made plaintiff to the suit if he consents and may either of its own motion or on the application of any defendant order such person, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant. In the event of such security not being furnished within the time fixed, the Court may make an order dismissing the suit so far as his right to, or interest in, the property in suit is concerned, or declaring that he shall be debarred from claiming any right to or interest in the property in suit. (2) If such person declines to be made a plaintiff, the Court may implead him as a defendant and may order him, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any other defendant. In the event of such security not being furnished within the time fixed, the Court may make an order declaring that he shall be debarred from claiming any right to or interest in the property in suit. (3) Any plaintiff or defendant against whom an order is made under this rule may apply to have it set aside and the provisions of sub-rules (2) and (3) of rule 2 shall apply mutatis mutandis to such application."-(1-10-1983).[Gujarat].-Same as that of Karnataka.[Karnataka].-Add the following as sub-rule (4) to rule 2:"(4) The provisions of section 5 of the Limitation Act, 1963, shall apply to applications under this rule."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madhya Pradesh].-Same as that of Bombay.

## **Order – XXVI**

### **Commissions**

## **1. Cases in which Court may issue commission to examine witness. -**

Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:[Provided that a

commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do. Explanation.-The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.] [ Inserted by Act 104 of 1976, (w.e.f. 1.2.1976)]

High Court Amendment-[Allahabad].-For rule 1, substitute the following rule:"1. Commission to examine witness.-Any Court may, in any suit, if for reasons to be recorded in writing, it thinks it necessary so to do in the interest of justice or expedition, issue a commission for examination of any person on interrogatories or otherwise."-(w.e.f. 22-11-1980).

## **2. Order for commission. -**

An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

## **3. Where witness resides within Court's jurisdiction. -**

A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

High Court Amendment-[Allahabad].For rule 3 substitute the following:"3. Commission to whom issued.-Such commission may be issued to any Court not being a High Court within the local limits of whose jurisdiction such person resides or to any pleader or other person whom the Court thinks fit to execute it and the Court shall direct whether the commission shall be returned to itself or to any subordinate Court."-(22-11-1980).

## **4. Persons for whose examination commission may issue. -**

(1)Any Court may in any suit issue a commission [for the examination on interrogatories or otherwise of-] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for "for the examination of" (w.e.f. 1.2. 1977).](a)any person resident beyond the local limits of its jurisdiction;(b)any person who is about to leave such limits before the date on which he is required to be examined in Court; and(c)any person in the service of the Government who cannot in the opinion of the Court, attend without detriment to the public service:[Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.(3)The Court on issuing any commission may this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

High Court Amendments-[Allahabad].-Rule 4 omitted-(22-11-1980).[Madhya Pradesh].-Add the following clause (d) to sub-rule (1):"(d) any person who by reason of anything connected with the war conveniently be spared."

**4A. [ Commission for examination of any person resident within the local limits of the jurisdiction of the Court.- Notwithstanding anything contained in these rules, any Court may, in the interest or justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.][Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 29 (w.e.f. 1.7.2002).]**

High Court Amendment-[Rajasthan].-After rule 4, add the following:"4-A. Commission for examination of any person resident with Court's local limits.-(1) Notwithstanding anything contained in these rules any Court may, in the interests of justice or for the expeditious disposal of the case or, -y other reason, issue commission in any suit for the examination on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.(2) The provisions of sub-rule (1) shall apply to proceedings in execution of a decree or order. "-(w.e.f. 1-12-1973).[N.B.-Similar provision [Rule 4(1)] has been incorporated in the Central Act by the 1999 Amendment Act.]

## **5. Commission or request to examine witness not within India. -**

Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

## **6. Court to examine witness pursuant to Commission. -**

Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

## **7. Return of commission with depositions of witnesses. -**

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the returned thereto and the evidence taken under it shall [subject to the provisions of rule 8] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).] from part of the record of the suit.

## **8. When depositions may be read in evidence. -**

Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless-(a)the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court or is a person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or(b)the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

High Court Amendment-[Allahabad].-In rule 7, the words "subject to the provisions of rule 8" shall be omitted and the words "and shall be read as evidence in the suit" shall be inserted in the end.

### **Commissions For Local Investigations**

## **9. Commissions to make local investigations. -**

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

High Court Amendments-[Calcutta].-Omit proviso to rule 9.[Gauhati].-Same as that of Calcutta.

## **10. Procedure of Commissioner. -**

(1)The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.(2)Report and deposition to be evidence in suit. Commissioner may be examined in person-The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to suit may examine the Commissioner personally in open Court touching any part of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.(3)Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.**[Commissions for scientific investigation, performance of ministerial act and sale of movable property]**

### **10A. Commission for scientific investigation. -**

(1)Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.(2)The provisions of rule 10 of the Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

### **10B. Commission for performance of a ministerial act. -**

(1)Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

### **10C. Commission for the sale of movable property. -**

(1)Where in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.(2)The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.(3)Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]**Commissions To Examine Accounts**

### **11. Commission to examine or adjust accounts. -**

In any suit in which an examination or adjustment of the accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

### **12. Court to give Commissioner necessary instructions. -**

(1)The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.(2)Proceedings and report to be evidence. Court may direct further inquiry.—The proceeding and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with

them, it may direct such further inquiry as it shall think fit.**Commissions To Make Partitions**

### **13. Commission to make partition of immovable property. -**

Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

### **14. Procedure of Commissioner. -**

(1)The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.(2)The commissioner shall then prepare and sign a report or the Commission (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds.Such report or reports shall be annexed to the commission and transmitted to Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.(3)Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

High Court Amendments-[Orissa].-Same as that of Patna.[Patna].-Substitute the following for sub-rules (2) and (3):"(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if necessary) by metes and bounds. The Commissioner or Commissioners shall append to the report, or where there is more than one, to each report a schedule showing the plots and areas allotted to each party and also, unless otherwise directed by the Court, a map showing in different colours, the plots or portions of plots allotted to each party. In the event of a plot being sub-divided, the area of each sub-plot shall be given in the schedule and also measurements showing how the plot is to be divided. Such report or reports with the schedule and the map, if any, shall be annexed to the Commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied and, when drawing up the final decree shall incorporate in its decree the schedule and the map, if any, mentioned in sub-rule (2) above, as confirmed or varied by the Court. The whole report or reports of the Commissioner or Commissioners shall not ordinarily be entered in the decree. When the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit."-(4-3-1932).

### **General Provisions**



## **15. Expenses of commission to be paid into Court. -**

Before issuing any commission under this Order, the Court may order such sum (if any ) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Same as Madras except that for the words "foreign Courts under the provisions of section 78", the words "any of the Courts mentioned in clause (c) of section 78 of this Code", are substituted-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Re-number the existing rule 15 as rule 15(1) and insert the following as sub-rule (2):"2. Before executing and returning any commission issued by foreign Courts under the provisions of section 78, the Court or the Commissioner required to execute the commission may levy such fees as the High Court may from time to time prescribe in this behalf in addition to the fees prescribed for the issue of summons to witnesses and for expenses of such witnesses under rule 2 of Order 16."[Orissa].-At the end of rule 15, add the following:"and after the issue of such commission, may order such further sums to be paid into Court from time to time by either party as the Court may consider necessary."-(7-3-1954).

## **16. Powers of Commissioners. -**

Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment, (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him; (b) call for and examine documents and other things relevant to the subject of inquiry; (c) at any reasonable time enter upon or into any land or building mentioned in the order. [16A . Questions objected to before the Commissioner. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]- (1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting: Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege. (2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.]

## **17. Attendance and examination of witnesses before Commissioner. -**

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court

situate beyond the limits of India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:[Provided that when the Commissioner is not a Judge of a Civil Court he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)A Commissioner may apply to any Court (not being a High Court) within the local limits on whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

## **18. Parties to appear before Commissioner. -**

(1)Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.(2)Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

High Court Amendments-[Allahabad].-In sub-rule (1) after the words "by their agents or pleaders", substitute a comma for the full stop and add:-"and shall direct the party applying for examination of the witness, or in its discretion any other party to the suit, to supply the Commissioner with a copy of the pleadings and issues."-(24-7-1961).[Orissa].-Same as that of Allahabad-(29-12-1961).

### **18A. [Application of Order to execution proceedings.-**

The provisions of this Order shall apply so far as may be, to proceedings in execution of a decree or order.

### **18B. Court to fix a time for return of commission. -**

The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]**Commissions Issued At The Instance Of Foreign Tribunals**

## **19. Cases in which High Court may issue commission to examine witness. -**

(1)If a High Court is satisfied-(a)that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,(b)that the proceeding is of a civil nature, and(c)that the witness is residing within the limits of the High Court's appellate jurisdiction, it may, subject to the provisions of the rule 20, issue a commission for the examination of such witness.(2)Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)-(a)by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or(b)by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or(c)by a letter of request issued by the foreign Court and produced before the High Court by a party

to the proceeding.

## **20. Application for issue of commission. -**

The High Court may issue a commission under rule 19-(a) upon application by a party to the proceeding before the foreign Court, or (b) upon an application by a law officer of the State Government acting under instructions from the State Government.

## **21. To whom commission may be issued. -**

A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court to any person whom the Court thinks fit to execute the commission.

High Court Amendment-[Kerala].-For rule 21, the following rule shall be substituted, namely: "21. To whom commission may be issued.-A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or to any person whom the Court thinks fit to execute the commission."-(9-6-1959).

## **22. Issue, execution and return of commissions, and transmission of evidence to foreign Court. -**

The provisions of rules 6, 15 [Sub-rule (1) of rule 16A, 17, 18 and 18B] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for " 16, 17 and 18" (w.e.f. 1.2.1977).] of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the letter of request for transmission to the foreign court.

Order 26, Rules 23 and 24 High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-After rule 22, add the following rules: "23. (1) The Court may in any suit issue a commission to such person or persons as it thinks fit to translate accounts and documents which are not in the language of the Court. (2) Before issuing such a commission the Court may order such sum, if any, as it thinks reasonable for the expenses of the commission to be paid into Court by the party at whose instance or for whose benefit the commission has been issued within such time as may be fixed by the Court. (3) The report of the Commissioner shall be evidence in the suit and shall form part of the record. (4) Where however a translation as required by rule 12 of Order XIII of this Code, has already been filed into Court, no further commission under this rule need be issued. (5) A translation submitted by the Commissioner or Commissioners under this rule shall be verified in the manner prescribed in rule 12 of Order XIII of this Code. 24. The provisions of this Order shall apply so far as may be, to proceedings in execution of a decree or order."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-After rule 22, the following rule shall be inserted, namely: "23. Application of Order to execution proceedings.-The provisions of this Order and of Order XXVI-A, shall apply, so far as may be, to proceedings in execution of a

decree or order."[Orissa].-After rule 22 insert the following:"23. (i) The Court may in any suit issue a commission to such persons as it thinks fit to translate accounts or other documents which are not in Court language or to inspect documents for purposes to be specified in the order appointing such Commissioner.(ii) The report of the Commissioner shall be evidence in suit and shall form part of the record.(iii) Before issuing commission under this rule the Court may order such sums (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid in the Court, by the party at whose instance or for whose benefit the commission is issued.24. Application of Order to execution proceedings.-The provisions of this Order shall apply, as far as maybe, to proceedings in execution of a decree or order."-(29-12-1961).Order 26-AHigh Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Insert the following as Order XXVI-A:-"ORDER XXVI-A1. The Court may, in any suit issue a commission to such person, as it thinks fit, to translate accounts and other documents which are not in the language of the Court.2. The report of the Commissioner shall be evidence in the suit and shall form part of the record.3. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expense of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued."

## **Order – XXVII**

### **Suits by or against the Government or Public Officers in their official capacity**

#### **1. Suits by or against Government. -**

In any suit by or against the Government the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Uttar Pradesh.- In the marginal heading of the Order, after the words "official capacity", insert the words "or Statutory Authorities, etc." - [U.P. Act 57 of 1976].

#### **2. Persons authorised to act for Government. -**

Persons being ex officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, act and applications under this Code may be made or done on behalf of the Government.

#### **3. Plaints in suits by or against Government. -**

In suits by or against the Government instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79.

#### **4. Agent for Government to receive process. -**

The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

High Court Amendment-[Rajasthan].-For Rule 4, substitute the following rule, namely:-"4. The Government pleader in any Court or an officer appointed for the purpose by the Government shall be the agent of the Government for the purpose of receiving processes against the Government, issued by such Court." (Noti. No. 11/SRO/97, dt. 27-9-97-Rajasthan Gazette, Pt. I-B, dt. 9-10-97, p. 63.).

#### **5. Fixing of day for appearance on behalf of Government. -**

The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government and may extend the time at its discretion but the time so extended shall not exceed two months in the aggregate.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-For the words "a reasonable time" substitute the words "not less than three months' time from the date of summons".-(2-3-1942).[Patna].-Same as that of Madras-(20-12-1960).

#### **5A. [Government to be joined as a party in a suit against a public officer. -**

Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1976).]

#### **5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement. -**

(1)In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.(2)If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.(3)The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.]

## **6. Attendance of person able to answer questions relating to suit against Government. -**

The Court may also in any case in which the Government pleader is not accompanied by any person on the part of the Government who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

## **7. Extension of time to enable public officer to make reference to Government. -**

(1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel. (2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

## **8. Procedure in suits against public officer. -**

(1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits. (2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties: Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Uttar Pradesh.- After rule 9 as inserted by Allahabad High Court insert the following:- "10. Suits by or against statutory authority.- (1) Any authority or Corporation, constituted by or under any law, may, from time to time, appoint a Standing Counsel, to be called Corporation pleader of that authority in any district and give information of such appointment to the District Judge and to Registrar of the High Court at Allahabad or at Lucknow Bench, as the case may be. (2) The Corporation pleader so appointed shall be the agent in that district of the appointing authority or Corporation for purposes of receiving processes against it but shall not act or plead without filing a vakalatnama or memorandum of appearance."-[U.P. Act 57 of 1976 amended by Notification dated 10.2.1981].

## **8A. No security to be required from Government or a public officer in certain cases. -**

No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

## **8B. Definitions of "Government" and "Government pleader". -**

In this Order [unless otherwise expressly, provided "Government" and "Government pleader" mean respectively-(a)in relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order;(b)[\*\*\*] [Clause b repealed by A.O. 1948.](c)in relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in clause (7) of section 2, or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.

Order 27, Rule 9High Court Amendments-[Allahabad].-Add the following as rule 9:"9. In every case in which the Government pleader appears for the Government as a party on its own account, or for the Government as undertaking, under the provisions of rule 8(1), the defence of a suit against an officer of the Government, he shall in lieu of a vakalatnama, file a memorandum on unstamped paper signed by him and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following form:Title of the suit, etc.1. A.B., Government pleader, appears on behalf of the Secretary of State for India in Council (or the Government of United Provinces, or as the case may be), respondent (or etc.), in the suit:Or, on behalf of the Government [which, under Order 27, rule 8(1) of Act V of 1908, has undertaken the defence of the suit], respondent (or etc.) in the suit."-(22-5-1915).[Andhra Pradesh].-Same as that of Madras.[Madras].-The existing Rules 8-A and 8-B of Order 27 shall be re-numbered as Rules 9 and 10 respectively.-(2-3-1942).[Orissa].-Add the following as Rule 9 to Order 27:"In every case in which the Government pleader appears for the Government as a party on it own accounts or for the Government as undertaking under the provision of rule 8(1), the defence of a suit against an officer of a Government, he shall in lieu of a vakalatnama, file a memorandum of unstamped paper signed by him and stating on whose behalf he appears".-(14-10-1960).

## **Order XXVII- A**

### **Suits involving a substantial question of Law as to the Interpretation for the Constitution or as to the validity of any Statutory instrument**

#### **1. Notice to the Attorney General or the Advocate-General. -**

In any suit in which it appears to the Court that any such question as is referred to in clause (1) of Article 132, read with Article 147 of the Constitution is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for India if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government.

## **1A. [Procedure in suits involving validity of any statutory instrument. -**

In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice-(a)to the Government pleader, if the question concerns the Government, or(b)to the authority which issued the statutory instrument, if the question concerns an authority other than Government.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **2. Court may add Government as party. -**

The Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving any such question as it referred to in clause (1) of Article 132 read with Article 147, of the Constitution, if the Attorney General for India or the Advocate-General of the State, as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

## **2A. [Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument. -**

The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.][ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **3. Costs. -**

[Where, under rule 2 or rule 2A the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 3 (w.e.f. 1.2. 1977).]

## **4. Application or Order to appeals. -**

In application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.[Explanation.-In this Order, "statutory instrument" means a rule, notification, bye-law order, scheme or form made as specified under any enactment.][Inserted by



the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **Order – XXVIII**

### **SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN**

#### **1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them. -**

(1)Where any officer, soldier, sailor or airman, actual serving under the Government in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.(2)The authority shall be writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman, is serving in military, naval or air force staff employment the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.(3)When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.Explanation.-In this Order the expression "commanding officer" means the officer in actual command for the time being of an regiment, corps, ship, detachment or depot which the officer, soldier sailor or airman belongs.

#### **2. Person so authorized may act personally or appoint pleader. -**

Any person authorized by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

#### **3. Service on person so authorized, or on his pleader, to be service. -**

Process served upon any person authorized by an officer soldier, sailor or airman under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

## **Order – XXIX**

### **Suits by or against Corporations**

## **1. Subscription and verification of pleading. -**

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Order 29, Rule 1-A High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras.[Madras].-Insert the following as rule 1-A of Order 29:"1-A. In suits against a local authority the Court in fixing the day for the defendant to appear and answer shall allow not less than two months' time between the date of summons and the date for appearance."

## **2. Service on corporation. -**

Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-(a)on the secretary, or on any director, or other principal officer of the corporation, or(b)by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Uttar Pradesh.- In its application to the State of Uttar Pradesh, in Order XXIX, rule 2, insert the following, after clause (a):-"(aa) on its corporation pleader in the district where the Court issuing summons is located, if one has been appointed and the appointment has been notified to the District Judge under rule 10 of Order XXVII, or." - [U.P. Act 57 of 1976].High Court Amendment-[Karnataka].-After rule 2 and before rule 3, add the following as rule 2-A:"2-A. Where the suit is against a local authority the Court in fixing the day for such authority to answer the plaint shall allow a reasonable time for the necessary communication with any department of the Government and for the issue of necessary instructions to the pleader of the authority, and may extend the time at its discretion."-(R.O.C. 2526/1959, dated 9-2-1967).

## **3. Power to require personal attendance of officer of corporation. -**

The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

## **Order – XXX**

**Suits by or against Firms and Persons carrying on business in names other than their own**

### **1. Suing of partners in name of firm. -**

(1)Any two or more persons claiming or being liable as partners and carrying on business, in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time

of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.(2)Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.

High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Punjab and Haryana].-To rule 1 of Order 30, the following Explanation shall be added:"Explanation.-This rule applies to a joint Hindu family trading partnership."

## **2. Disclosure of partners' names. -**

(1)Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demanding writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.(2)Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.(3)Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:[Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for the proviso (w.e.f. 1.2.1977).]

## **3. Service. -**

Where persons are sued as partners in the name of their firm, the summons shall be served either-(a)upon any one or more of the partners, or(b)at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management or the partnership business, there, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India:Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.

## **4. Rights of suit on death of partner. -**

(1)Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.(2)Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative

of the deceased may have-(a)to apply to be made a party to the suit, or(b)to enforce any claim against the survivor or survivors.

## **5. Notice in what capacity served. -**

Where a summons is issued to a firm and is served in the manner provided by rule 3 , every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

## **6. Appearance of partners. -**

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

High Court Amendment-[Orissa].-At the end of rule 6 add as follows:"but the decree shall, however, contain the names of all such partners."-(7-5-1954).

## **7. No appearance except by partners. -**

Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

## **8. [Appearance under protest. -**

(1)Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at an material time.(2)On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determinig whether that person was a partner of the firm and liable as such.(3)If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.(4)If the Court, however, holds that such person was not a partner of the firm and was not liable as such that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the laibility of that person as a partner of the firm in execution of any decree that may be passed against the firm.][Substituted by Act No. 10 of 1976 for rule 8 (w.e.f. 1.2.1977).]

## **9. Suits between co-partners. -**

This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners, in common; but not execution shall be issued in such

suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

## **10. [Suit against person carrying on business in name other than his own. -**

Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **Order – XXXI**

### **SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS**

#### **1. Representation of beneficiaries in suits concerning property vested in trustees, etc.. -**

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee; executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

#### **2. Joinder of trustee, executors and administrators. -**

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them: Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside India need not be made parties.

#### **3. Husband of married executrix not to join. -**

Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

## **Order – XXXII**

### **Suits by or against Minors and Persons of Unsound mind**

## **1. Minor to sue by next friend. -**

Every suit by a minor shall be instituted in his name by a person who in such shall be called the next friend of the minor.[Explanation.-In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875) where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab.[Punjab, Haryana and Chandigarh].-To Order 32, rule 1, the following paragraph shall be added:"Such person may be ordered, to pay any costs in the suit as if he were the plaintiff."

## **2. Where suit is instituted without next friend, plaint to be taken off the file. -**

(1)Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.(2)Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

## **2A. [Security to be furnished by next friend when so ordered. -**

(1)Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for the reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.[Inserted by Act 104 No. of 1976 (w.e.f. 1.2.1977).](2)Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.(3)The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

## **3. Guardian for the suit to be appointed by Court for minor defendant.-**

(1)Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.(2)An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.(3)Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.(4)Order shall be made on any application under this rule except upon notice to any [\*\*\*] [The words " to the minor and" omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72.] to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, [upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] [ The words " to the minor and" omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72.] of the minor, or, where there is [no father, mother or other

natural guardian] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1. 2.1977).], 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.(4A)[The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).](5)A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.

High Court Amendments-[Allahabad].-In rule 3:(i) Delete the full stop at the end of sub-rule (3) and add the following, namely:"and shall also contain the names and addresses of all probable guardians including any guardian of the minor appointed or declared by an authority competent in that behalf, or the father or the other natural guardian of the minor, or where there is no father or other natural guardian the person in whose care the minor is."-(1-6-1957).(ii) for sub-rule (4) (as it is in the body of the Code without any proviso), substitute the following, namely:"(4) The Court shall cause notice of such application to be served upon the minor as also upon all the probable guardians named in the application and such other person as it may deem fit calling upon them to file objections, if any, to the appointment of the proposed or any other probable guardian as guardian of the minor. In case any person himself desires to be appointed guardian of the minor instead of the proposed guardian, he shall furnish an affidavit verifying the fact that he has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.The Court shall after hearing the objections, if any, considering the respective claims of all persons, desirous of being appointed guardian including the proposed guardian, appoint such person as guardian of the minor as it may deem fit."-(1-6-1957).(iii) to sub-rule (4) add the following, namely:"Provided that if the minor is under twelve years of age no such notice shall be issued to him".-(24-7-1926 and 1-6-1957).[Andhra Pradesh].-Same as that of Madras.[Delhi].-Same as that of Punjab.[Gujarat].-The words "to the minor and" in line 2 of sub-rule (4) of rule 3 of Order XXXII shall be deleted.-(17-8-1961.).[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 3 and substitute the following:"3. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit: Provided that the interest of that person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant in the suit or in the case of a guardian, a plaintiff in the suit.(2) Where a minor has a guardian appointed or declared by a competent authority no person other than the guardian shall act as the next friend of the minor or be appointed as a guardian for the suit, unless the Court considers, for reasons to be recorded in writing that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.(3) Where the defendant is a minor, the Court on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for the minor. A person appointed as guardian under this sub-rule, shall, unless his appointment is terminated by retirement or removal by order of Court on application made for the purpose or by his death, continue throughout all proceedings in the suit or arising out of the suit including proceedings in any appeal or in revision and any proceedings in execution of a decree and the service of any process in any such proceeding on the said guardian if duly made shall be deemed to be good service for the purposes of such proceedings.(4) An order for

the appointment of a guardian for the suit may be obtained upon an application in the name and on behalf of the minor or by the plaintiff. The application where it is by the plaintiff shall whenever necessary set forth in the order of their suitability a list of persons who are competent and qualified to act as guardian for the suit for the minor defendant.(5) The application referred to in the last preceding sub-rule whether made by the plaintiff or on behalf of the minor defendant shall be supported by an affidavit verifying the fact that the proposed guardian has not or that no one of the proposed guardians has any interest in the matters in controversy in the suit adverse to that of the minor and that the proposed guardian or guardians are fit persons to be so appointed. The affidavit shall further state according to the circumstances of each case particulars of any existing guardian appointed or declared by competent authority, the name and address of the person, if any, who is the de facto guardian of the minor, the names and addresses of persons, if any, who, in the event of either the natural or the de facto guardian or the guardian appointed or declared by competent authority, not being permitted to act, are by reason of relationship or interest, or otherwise suitable persons to act as guardians for the minor for the suit.(6) An application for the appointment of a guardian for the suit of a minor shall not be combined with an application for bringing on record the legal representative of a deceased party.(7) No order shall be made on any application under sub-rule (4) above except upon notice to the minor and also to any guardian of the minor appointed or declared by an authority competent in that behalf or where there is no such guardian upon notice to the father or natural guardian of the minor, or where there is no father or natural guardian upon notice to the person in whose actual care the minor is, and after hearing any objection which may be urged on behalf of any person so served with notice. The notice required by this sub-rule shall be served at least seven clear days before the day named in the notice for hearing of the application.(8) Where none of the persons mentioned in the last preceding sub-rule is willing to act as guardian, the Court shall direct notice to other person or persons proposed for appointment as guardian either simultaneously to some or all of them, or successively as it may consider convenient or desirable in the circumstances of the case. The Court shall appoint such person as it thinks proper from among those who have signified their consent and intimate the fact of such appointment to the person appointed by registered post unless he is present at the time of appointment either in person or by pleader.(9) No person shall be appointed guardian for the suit without his consent and except in cases where an applicant himself prays for his appointment as guardian, notices issued shall clearly require the party served to signify his consent or refusal to act as guardian.(10) Where the Court finds no person fit and willing to act as guardian for the suit the Court may appoint any of its officers or a pleader of the Court to be a guardian and may direct that costs to be incurred by that officer or pleader in the performance of his duties as guardian shall be borne either by the parties or by any one or more of the parties to the suit or out of any fund in Court in which the minor is interested and may give direction for the repayment or allowance of the costs as justice and the circumstances of the case may require.(11) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his defence thereby, the Court may from time to time order the plaintiff to advance moneys to the guardian for the purpose of his defence and all moneys so advanced shall form costs of the plaintiff in the suit. The order shall direct that the guardian as and when required by the Court shall file into Court the account of the moneys so received by him."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In rule 3:(i) for sub-rule (2) the following shall be substituted,



namely: "(2) Appointment to be on application and where necessary after notice to proposed guardian.-An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. The application where it is by the plaintiff, shall set forth in the order of their suitability, a list of persons (with their full addresses as for service of notice in Form No. 11-A set forth, in Appendix H hereto) who are competent and qualified to act as guardian for the suit for the minor defendant. The Court may, for reasons to be recorded, in any particular case, exempt the applicant from furnishing the list referred to above." (ii) in sub-rule (3) at the end, the following shall be added, namely: "The affidavit shall further state the name of the person or persons on whom notice has to be served under the provisions of sub-rule (4)." (iii) to sub-rule (4) the following proviso shall be added, namely: "Provided that if the minor is under 15 years of age no such notice shall be issued to him." [Madhya Pradesh].-Substitute the following for the existing rule: "3. Guardian for the suit to be appointed by Court for minor defendant.-(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for suit of such minor.(2) A person appointed under sub-rule (1) to be guardian for the suit for minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree."-(16-9-1960).[Madras].-Substitute rule 3 for old rules 3 and 4: "3. (1) Qualifications to be a next friend or guardian.-Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit: Provided that the interest of that person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.(2) Appointed or declared guardians to be preferred and to be superseded only for reasons recorded.-Where a minor has a guardian appointed or declared by competent authority, no person other than the guardian shall act as the next friend of the minor or be appointed his guardian for the suit, unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.(3) Guardian to be appointed by Court.-Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for the minor.(3A) A person appointed under sub-rule (3) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings, arising out of the suit including proceedings in any appellate or revisional Court and any proceeding in execution of a decree.(4) Appointment to be on application and where necessary after notice to proposed guardian.-An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. The application, where it is by the plaintiff, shall set forth, in the order of their suitability, a list of persons (with their full addresses for service of notice in Form 11-A set forth in Appendix H hereto) who are competent and qualified to act as guardian for the suit for the minor defendant. The Court may, for reasons to be recorded, in any particular case, exempt the applicant from furnishing the list referred to above.(5) Contents of affidavit in support of the application for appointment of guardian.-The application referred to in the above sub-rule whether made by the plaintiff or on behalf of the minor defendant shall be supported by an affidavit verifying the fact that the proposed guardian has not or that no one of the proposed guardians has any interest in the matters in controversy in the suit adverse to that of the minor and that the proposed guardian or guardians are fit persons to be so appointed. The affidavit shall further state, according to the

circumstances of each case, (a) particulars of any existing guardian appointed or declared by competent authority; (b) the name and address of the person, if any, who is the de facto guardian of the minor; (c) the names and addresses of persons, if any, who in the event of either the natural or the de facto guardian or the guardian appointed or declared by competent authority, not being permitted to act, are by reason of relationship or interest or otherwise, suitable persons to act as guardians for the minor for the suit.(6) Application for appointment of guardian to be separate from application for bringing on record the legal representatives of a deceased party.-An application for the appointment of a guardian for the suit of a minor shall not be combined with an application for bringing on record the legal representatives of a deceased plaintiff or defendant. The application shall be by separate petition.(7) Notice of application to be given to persons interested in the minor defendant other than the proposed guardian.-No order shall be made on any application under sub-rule (4) above except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or where there is no guardian, upon notice to the father or other natural guardian of the minor, or where there is no father 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. The notice required by this sub-rule shall be served six clear days before the day named in the notice for the hearing of the application and may be in Form No. 11 set forth in Appendix H hereto.(8) Special provision to shorten delay in getting a guardian appointed.-Where the application is by the plaintiff, he shall, along with his application and affidavit referred to in sub-rules (4) and (5) above, produce the necessary forms in duplicate, filled in to the extent that is possible at that stage, for the issue simultaneously of notices to at least two of the proposed guardians for the suit to be selected by the Court from the list referred to in sub-rule (4) above, together with a duly stamped voucher indicating that the fees prescribed for service have been paid. If one or more of the proposed guardians signify his or their consent to act, the Court shall appoint one of them and intimate the fact of such appointment to the person appointed by registered post. If no one of the persons served signifies his consent to act, the Court shall proceed to serve simultaneously another selected two, if so many there be, of the persons named in the list referred to in sub-rule (4) above, but no fresh application under sub-rule (4) shall be deemed necessary. The applicant shall, within three days of intimation of unwillingness by the first set of proposed guardians, pay the prescribed fee for service and produce the necessary forms duly filled in.(9) No person shall be appointed without his consent.-No person shall, without his consent, be appointed guardian, for the suit. Whenever an application is made proposing the name of a person as a guardian for the suit, a notice in Form No. 11-A set forth in Appendix H hereto shall be served on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents.(10) Court-guardian-When to be appointed-How he is to be placed in funds.-Where the Court finds no person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader of the Court to be guardian and may direct that the costs to be incurred by that officer in the performance of his duties as guardian shall be borne either by the parties or by any one or more of the parties to the suit or out of any fund in Court in which the minor is interested, and may give directions for the repayments or allowance of the costs as justice and the circumstances of the case may require.(11) Funds for a guardian other than Court-guardian to defend.-When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his

defence thereby, the Court may, from time to time, order the plaintiff to advance moneys to the guardian for purpose of his defence and all moneys so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court an account of the moneys so received by him."[Punjab and Haryana].-(i) The following sub-rules were substituted for sub-rules (3) and (4):"(3) The plaintiff shall file, with his plaint a list of relatives of the minor and other persons with their addresses, who prima facie are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub-rule (2) above.(4) The Court may, at any time after institution of the suit, call upon the plaintiff to furnish such a list, and, in default of compliance, may reject the plaint."(ii) Add the following as sub-rules (6) and (7):-"(6) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor, and that each person proposed is a fit person to be so appointed.(7) No order shall be made on any application under this rule, except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian, of the minor or, where there is no father 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:Provided that the Court may, if it sees fit, issue notice to the minor also."

### **3A. . [Decree against minor to be set aside unless prejudice has been caused to his interests. -**

(1)No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reasons of such adverse interest of the next friend of guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.(2)Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.][ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

### **4. Who may act as next friend or be appointed guardian for the suit. -**

(1)Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.(2)Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.(3)No person shall without his consent [in writing] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] be appointed guardian for the suit.(4)Where there is no other person fit and willing to act as guardian for the suit, for Court may appoint any of its officers to be

such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested [or out of the property of the minor] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).], and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

High Court Amendments-[Allahabad].-Substitute the following as rule 4:"4. (1) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as next friend, except by leave of the Court.(2) Subject to the provisions of sub-rule (1)'any person who is of sound mind and has attained majority may act as next friend of a minor, unless the interest of such person is adverse to that of the minor, or he is a defendant, or the Court for other reasons to be recorded, considers him unfit to act.(3) Every next friend shall, except as otherwise provided by clause (5) of this rule, be entitled to be reimbursed from the estate of the minor any expenses incurred by him while acting for the minor.(4) The Court may, in its discretion, for reasons to be recorded, award costs of the suit or compensation under section 85-A or section 95 against the next friend personally as if he were a plaintiff.(5) Costs or compensation awarded under clause (4) shall not be recoverable by the guardian from the estate of the minor, unless the decree expressly directs that they shall be so recoverable."-(24-7-1926).[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Substitute the words "Except as otherwise provided in this Order" for the words "Where there is no other person fit and willing to act as guardian for the suit" in sub-rule (4).-(13-6-1927).[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Karnataka].-Delete rule 4-(R.O.C. No. 2526/1959, dated 9-2-1967)..[Kerala].-(i) In sub-rule (3) at the end, the following shall be added, namely:-"Whenever an application is made proposing the name of a person as a guardian for the suit, a notice in Form No. 11-A set forth in Appendix H hereto shall be served on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents."(ii) to sub-rule (4) the following Explanation shall be added, namely:-"Explanation.-An officer of the Court shall for the purpose of this sub-rule include a pleader of the Court."(iii) After sub-rule (4) the following sub-rule shall be inserted, namely:"(5) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant, and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance moneys to the guardian for the purpose of his defence and all moneys so advanced shall form part of the cost of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court an account of the moneys so received by him."[Madhya Pradesh].-Substitute the following for the existing rule:"4. Who may act as next friend or guardian for the suit.-(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or as his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act in either capacity."-(16-9-1960).[Madras].-Rule 4 is deleted (see

amendment to rule 3 above).[Orissa].-Same as that of Patna-(26-7-1948).[Patna].-In sub-rule (4) for the words "Where there is no other person fit and willing to act as guardian for the suit" in the first sentence of the sub-rule (4) substitute the following:"Where the person whom the Court, after hearing objections, if any, under sub-rule (4) of rule 3, proposes to appoint as guardian for the suit, fails within the time fixed in a notice to him, to express his consent to be so appointed."[Punjab and Haryana].-(i) Insert sub-rule (2-A):"(2-A) Where a minor defendant has no guardian appointed or declared by competent authority, the Court may, subject to the proviso to sub-rule (1), appoint as his guardian for the suit a relative of the minor.If no proper person be available, who is a relative of the minor, the Court shall appoint one of the other defendants, if any, and failing such other defendant, shall ordinarily proceed under sub-rule (4) of this rule to appoint one of its officers or a pleader."(ii) Sub-rule (3).-The following words were added to sub-rule (3):"but the Court may presume such consent to have been given, unless it is expressly refused".(iii) Sub-rule (4).-In sub-rule (4) after the word "Officers", "or a pleader" shall be inserted and for the word "Officer", "person" be substituted.Order 32, Rule 4-A High Court Amendments-[Allahabad].-Add the following as rule 4-A:"4-A. (1) Where a minor has a guardian appointed by competent authority, no person other than such guardian shall be appointed his guardian for the suit unless the Court considers for reasons to be recorded that it is for the minor's welfare that another person be appointed.(2) Where there is no such guardian, or where the Court considers that such guardian should not be appointed, it shall appoint as guardian for the suit the natural guardian of the minor, if qualified, or, where there is no such guardian, the person in whose care the minor is, or any other suitable person who has notified the Court of his willingness to act, or failing any such person, an officer of the Court.Explanation.-An officer of the Court shall for the purposes of this sub-rule include a legal practitioner on the roll of the Court.(3) No person shall without his consent be appointed guardian for the suit: provided that in all cases the consent of such person shall be presumed, unless within fifteen days of receipt of notice from the Court, he notifies, to the Court his refusal to accept appointment as such guardian. Refusal to accept notice shall be presumed to be refusal to act.(4) Where an officer of the Court is appointed guardian for the suit under sub-rule (2), the Court may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the payment or allowance of such costs as justice and the circumstances of the case may require."-(24-7-1926).[Madhya Pradesh].-Add the following:"4-A. Procedure for appointment of guardian for the suit.-(1) No person, except the guardian appointed or declared by competent authority, shall, without his consent, be appointed guardian for the suit.(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.(3) Unless the Court is otherwise satisfied of the fact that the proposed guardian has no interest adverse to that of the minor in the matters in controversy in the suit and that he is a fit person to be so appointed it shall require such application to be supported by an affidavit verifying the fact.(4) No order shall be made on any application for the appointment as guardian for the suit of any person, other than a guardian of the minor appointed or declared by competent authority, except upon notice to the proposed guardian for the suit and to any guardian of the minor appointed or declared by competent authority or where there is no such guardian, the person in whose care the minor is, and after hearing any objection that may be urged on a day to be specified in the notice. The Court may, in any case, if it thinks fit, issue notice to the minor also.(5)

Where, on or before the specified day, such proposed guardian fails to appear and express his consent to act as guardian for the suit, or where he is considered unfit, or disqualified under sub-rule (3), the Court may, in the absence of any other person fit and willing to act, appoint any of its ministerial officers, or a legal practitioner, to be guardian for the suit. If a legal practitioner, is appointed guardian for the suit, the Court shall pass an order stating whether he is to conduct the case himself or engage another legal practitioner for the purpose.(6) In any case in which there is a minor defendant, the Court may direct that a sufficient sum shall be deposited in Court by the plaintiff from which sum the expenses of the minor defendant in the suit including the expenses of a legal practitioner appointed guardian for the suit shall be paid. The costs so incurred by the plaintiff shall be adjusted in accordance with the final order passed in the suit in respect of costs."-(16-9-1960).

## **5. Representation of minor by next friend or guardian for the suit. -**

(1)Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.(2)Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

## **6. Receipt by next friend or guardian for the suit of property under decree for minor. -**

(1)A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either-(a)by way of compromise before decree or order, or(b)under a decree or order in favour of the minor.(2)Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application:[Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian-(a)is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or(b)is the parent of the minor.]

## **7. Agreement or compromise by next friend or guardian for the suit. -**

(1)No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.(1A)[ An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend of the guardian for the suit, as the case may

be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor: Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Karnataka].-Re-number existing sub-rule (2) of rule 7 as sub-rule (3) and insert the following as sub-rule (2): "(2) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other similar action on behalf of a minor or other person under disability, the affidavit in support of the application shall set out the manner in which the proposed compromise, agreement or other action is likely to affect the interests of the minor or other person under the disability and the reasons why such compromise, agreement or other action is expected to be for the benefit of the minor or other person under disability: where in such a case the minor or the other person under disability is represented by Counsel or pleader, the said Counsel or pleader shall also file into Court along with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under disability. If the Court grants leave under sub-rule (1) of this rule, the decree or order of the Court shall expressly recite the grant of the leave sought from the Court in respect of the compromise, agreement or other action as aforesaid after consideration of the affidavit and the certificate mentioned above and shall also set out either in the body of the decree itself or in a Schedule annexed thereto the terms of the compromise or agreement or the particulars of the other action."-(R.O.C. No. 2526/1959, dated 9-2-1967).

## **8. Retirement of next friend. -**

(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred. (2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

## **9. Removal of next friend. -**

(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or during the pendency of the suit, ceases to reside within India or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit. (2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next

friend, the Court shall remove that next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

## **10. Stay of proceedings on removal, etc., of next friend. -**

(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place. (2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

## **11. Retirement, removal or death of guardian for the suit. -**

(1) Where the guardian for the suit desires to retire or does not do his duty, or where there sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit. (2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

High Court Amendment.-[Allahabad].-In sub-rule (1) of rule 11-(i) delete the words "and may make such order as to costs as it thinks fit" occurring at the end of the said rule; and(ii) add to the said sub-rule the following, as proviso: "Provided that where the guardian desires to retire without reasonable cause, the Court shall while permitting him to retire, direct that he shall pay the costs to be incurred in the appointment of a fresh guardian."-(1-6-1957).

## **12. Course to be followed by minor plaintiff or applicant on attaining majority. -**

(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application. (2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name. (3) The title of the suit or application shall in such case be corrected so as to read henceforth thus: "A.B., late a minor, by C.D., his next friend, but now having attained majority." (4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend. (5) Any application under this rule may be made ex parte but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.



### **13. Where minor co-plaintiff attaining, majority desires to repudiate suit. -**

(1)Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.(2)Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.(3)The costs of all parties of such application, and of all or any proceedings therefore had in the suit, shall be paid by such persons as the Court directs.(4)Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

### **14. Unreasonable or improper suit. -**

(1)A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.(2)Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Order 32, Rule 14-AHigh Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-After rule 14 and before rule 15, add the following as rule 14-A:"14-A. When a minor defendant attains majority, either he or the guardian appointed for him in the suit or the plaintiff may apply to the Court to declare the said defendant a major and to discharge the guardian and notice thereof shay, be given to such among them as are not applicants. When the Court by order declares the said defendant as major it shall by the same order discharge the guardian and thereafter the suit shall be proceeded with against the said defendant as a major."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras subject to the modification, namely, the words "shall be deemed" to "Civil Procedure and" are deleted.-(9-6-1959).[Madras].-In Order 32, after rule 14, add the following as rule 14-A:"14-A. The appointment or discharge of a next friend or guardian for the suit of a minor in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the Supreme Court, shall be deemed to be a quasi-judicial act within the meaning of section 128(2)(i) of the Code of Civil Procedure and may be performed by the Registrar, provided that contested applications and applications presented out of time shall be posted before a judge for disposal."

### **15. [ Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.-**

Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, or protecting their interest when suing or being sued.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 15 (w.e.f. 1.2.1977)]

## **16. [ Savings.-**

(1) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name. (2) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind. [[Substituted by Act 104 of 1976 for rule 16 (w.e.f. 1.2.1977)]

Order 32, Rule 17 High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Madras].-Add the following as rule 17 of Order 32:"17. In suits relating to the person or property of a minor or other person under the superintendence of the Court of Wards, the Court in fixing the day for the defendant to appear and answer shall allow not less than two months' time between the date of summons and the date for appearance."

## **ORDER – XXXII-A**

### **Suits Relating to matters concerning the family**

#### **1. Application of the Order. -**

(1) The provision of this Order shall apply to suits or proceedings relating to matters concerning the family. (2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:-(a) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person; (b) a suit or proceeding for a declaration as to legitimacy of any person; (c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability; (d) a suit or proceeding for maintenance; (e) a suit or proceeding as to the validity or effect of an adoption; (f) a suit or proceeding, instituted by a member of the family relating to wills, intestacy and succession; (g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law. (3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

#### **2. Proceedings to be held in camera. -**

In every suit or proceeding to which this Order applies, the proceeding may be held in camera if the Court so desires and shall be so held if either party so desires.

#### **3. Duty of Court to make efforts for settlement. -**

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the

case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.(2)If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.(3)The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

#### **4. Assistance of welfare expert. -**

In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 or this Order.

#### **5. Duty to inquire into facts. -**

In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far as is reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

#### **6. "Family".**

meaning of-For the purposes of this Order, each of the following shall be treated as constituting a family, namely:-(a)(i)a man and his wife living together,(ii)any child or children, being issue or theirs; or of such man or such wife,(iii)any child or children being maintained by such man or 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 hers, 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)any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.Explanation.-For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force.] [Order 32A Inserted by Section 80 Act 104 of 1976 for rule (w.e.f. 1.2.1977)]

### **Order – XXXIII**

#### **Suits by Indigent Persons**

## **1. Suits may be instituted by indigent person. -**

Subject to the following provisions, any suit may be instituted by an indigent person.[Explanation 1 - A person is an indigent person,-(a)if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or(b)where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.Explanation II.-Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.Explanation II.-Where the plaintiff sued in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for the former Explanation (w.e.f. 1.2.1977).]

High Court Amendments-[Bombay].-In Order XXXIII, rule 1, for the existingExplanation below rule 1, substitute the following Explanation:"Explanation.-A person shall be deemed to be an indigent person if he is not possessed of means exceeding rupees one thousand in value, or where he is possessed of means exceeding one thousand rupees in value, the same are not sufficient to enable him to pay fees prescribed by law for the plaint.For the purposes of this Explanation the means which a person is possessed of shall be deemed not to include property exempt from attachment in execution of a decree and the subject-matter of the suit."-(1-10-1983).

### **1A. . [Inquiry into the means of an indigent person. -**

Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **2. Contents of application. -**

Every application for permission to sue as an [indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977)] shall contain the particulars required in regard to plaints in suits: a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

## **3. Presentation of application. -**

Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the

application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person:[Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-In rule 3, after the words "unless he is exempted from appearing in Court" add the words "or detained in prison".-(8-5-1957).[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-To rule 3, the following Explanation shall be added, namely:-"Explanation.-Where there are more applicants than one, presentation by one shall be deemed to be sufficient compliance with the provisions of the rule."-(9-6-1959).[Madras].-Add the following at the end of rule 3:"The High Court may by general or special order exempt any person or class of persons from the obligation to present in person an application for permission to sue as a pauper."-(12-10-1940).

#### **4. Examination of applicant. -**

(1)Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.(2)If presented agent, Court may order applicant to be examined by commission.-Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

#### **5. Rejection of application. -**

The Court shall reject an application for permission to sue as [an indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).]-(a)where it is not framed and presented in the manner prescribed by rules 2 and 3, or(b)where the applicant is not an [indigent persons] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).], or(c)where he has, within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as [an indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).]:[Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person,] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] or(d)where his allegations do not show a cause of action, or(e)where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter, [or] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](f)[ where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or(g)where any other person has entered into an agreement with him to finance the litigation.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-Add the following Explanation to rule 5 at the end:"Explanation.-An application shall not be rejected under clause (d) merely on the ground that the proposed suit appears to be barred by any law".In rule -5-{a}:-Ad.dthe words "and the applicant, on being required by the Court to make any amendment within a time to be fixed by the Court, fails to do so" between the figure "3" and the word "or".-(15-4-1933).[Andhra Pradesh].-For rule 5, clause (d), substitute the following:"(a) Where the allegations in the application show that the suit is barred by law or do not show a cause of action".[Karnataka].-In rule 5 substitute the following for clause (a):"5(a). Where it is not framed and presented in the manner prescribed by rules 2 and 3 and the applicant when required by the Court to rectify the defect within a time to be fixed by the Court fails to do so, or".-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In rule 5, after clause (d) the following clause shall be inserted, namely:-(d-1) where the suit appears to be barred by any law, or".-(9-6-1959).[Madras].-Substitute the following for clause (d):"(d) where the allegations do not show a cause of action, or(d-1) where the suit appears to be barred by any law, or".-(22-10-1940).

## **6. Notice of day for receiving evidence of applicant's indigency. -**

Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten day's clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the application may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.

High Court Amendments-[Andhra Pradesh].-For rule 6, substitute the following rule:"6. Where the Court sees no reason to reject the application on the grounds stated in clauses (a) and (d) of rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving evidence from the parties including the Government pleader with regard to the matters specified in clauses (b), (c) and (e) of rule 5."-(4-3-1975).[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Substitute the following for rule 6:"6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall "nevertheless" fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce to prove that the application is not subject to any of the prohibitions in rule 5 and for hearing any evidence which may be adduced to the contrary."

## **7. Procedure at hearing. -**

(1)On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a full record of their evidence.(1A)[ The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court [under rule 6 or under

this rule] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2. 1977).], the applicant is or is not subject to any of the prohibitions specified in rule 5.(3)The Court shall then either allow or refuse to allow the applicant to sue as [an indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).].

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Same as that of Madras-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-In rule 7, in sub-rule (3) for the full stop at the end of the rule, a comma shall be substituted and the following shall be added, namely:"or direct that the application be filed as a plaint on the applicant paying the requisite Court-fee within 30 days or such reasonable time as the Court may fix."-(9-6-1959).[Madras].-Add the following as sub-rule (4):"(4). Where the application is for leave to sue in a representative capacity under Explanation (3) to rule 1, or under sections 91, 92 or under Order 1, rule 8, the Court may, if it thinks fit, for reasons to be recorded in writing, direct that the plaintiff shall give security for the payment of Court-fee."-(22-10-1940).

## **8. Procedure if application admitted. -**

Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee [or fees payable for service of process] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

## **9. Withdrawal of permission to sue as an indigent person. -**

The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn-(a)if he is guilty of vexatious or improper conduct in the course of the suit;(b)if it appears that his means are such that he ought not to continue to sue as [an indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).]; or(c)if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interested in such subject-matter.

High Court Amendment-[Orissa].-At the end of clause (c) add the word "or" and thereafter add a new clause to the rule as follows:"(d) If he has entered into an arrangement with any other person to finance the litigation. "-(7-5-1954).

[9A . Court to assign a pleader to an unrepresented indigent person. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]- (1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.(2)The High Court may, with the previous approval of the State Government, make rules providing for-(a)the mode of selecting

pleaders to be assigned under sub-rule (1);(b)the facilities to be provided to such pleaders by the Court;(c)any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).]

## **10. Costs were indigent person succeeds. -**

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an [indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).]; such amount shall be recoverable by the State Government any party order by the decree to pay the same and shall be a first charge on the subject-matter of the suit.

## **11. Procedure where indigent person fails. -**

Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed,-(a)because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service [or to present copies of the plaint or concise statement] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1. 2.1977).], or(b)because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an [indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).].

High Court Amendments-[Andhra Pradesh].-The existing rule 11, which is same as that of Madras, shall be renumbered as sub-rule (1) to rule 11 and the following shall be added as sub-rule (2) thereof:"(2) Where the suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, but no provision is made for the payment of Court-fee, the Court may direct either of, or both, the parties to pay the Court-fee or any proportionate part thereof, as it thinks fit."-(14-9-1961).[Karnataka].-Substitute the following for existing rule 11:"11. (1) Where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or where part of the claim is abandoned or the suit is dismissed because the summons for the defendant to appear and answer has not been served upon him in consequence of the plaintiff's failure to pay the requisite charges for service or the suit is so dismissed because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff or any person added as a co-plaintiff to the suit to pay the Court-fee and in case of abandonment of part of the claim the proportionate Court-fee which would have been payable by the plaintiff if he ' \_ ^ ^ a mot been permitted to sue as pauper.(2) In cases where the plaintiff is diapaupered the Court may, instead of proceeding under sub-rule (1) order the plaintiff to pay the requisite Court-fee within a time to be fixed by it and in default dismiss the suit and make an order for the payment of Court-fee as in sub-rule (1).(3) Where the Court finds that the suit has been instituted unreasonably or improperly by a next friend on behalf of a minor plaintiff on a cause of action which accrued during the minority of such plaintiff the Court may



order the next friend to personally pay the Court-fee."-(30-3-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Substitute the following for existing rule 11:"11. Where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or where part of the claim is abandoned or where the suit is dismissed(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the Court-fees or postal charges (if any) chargeable for such service, or(b) because the plaintiff does not appear when the suit is called on for hearing the Court shall order the plaintiff or any person added as a co-plaintiff to the suit, to pay the Court-fee and in the case of abandonment of part of the claim the proportionate Court-fee, which would have been payable by the plaintiff he had not been permitted to sue as a pauper. In cases where the plaintiff is dispaupered the Court may instead of proceeding under the previous paragraph, order the plaintiff to pay the requisite Court-fee within a time to be fixed by it and in default dismiss the suit and make an order for the payment of Court-fee as in the previous paragraph. Where the Court finds that the suit has been instituted unreasonably or improperly by a next friend on behalf of a minor plaintiff on a cause of action which accrued during the minority of such plaintiff, the Court may order the next friend to personally pay the Court-fee."-(22-10-1940).[Pondicherry].-Same as that of Madras.

### **11A. Procedure where indigent persons suit abates. -**

Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an [indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).] shall be recoverable by the State Government from the estate of the deceased plaintiff.]

## **12. State Government may apply for payment of court-fees. -**

The State Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or rule 11A.

High Court Amendments-[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Rule 12, shall be re-numbered as sub-rule (1) of that rule; and after sub-rule(1) of rule 12, the following sub-rule shall be added, namely:"(2) Notice to State Government before payment.-No order for payment out of money standing to the credit or any suit instituted in forma pauperis shall be made on the application of any party except after notice given to the Government Pleader on behalf of the Government."-(10-8-1955).

## **13. State Government to be deemed a party. -**

All matters arising between the State Government and any party to the suit under rule 10, rule 11 rule 11A or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

High Court Amendment-[Andhra Pradesh].-In Order 33, after rule 13, the following shall be inserted, namely:"13-A. If any money is outstanding to the credit of a suitor appeal or other

proceeding instituted, preferred or taken in forma pauperis no order for payment out of such money shall be made on application of any party except after due notice to the State Government."-(15-2-1956).

#### **14. Recovery of amount of court-fees.. -**

Where an order is made under rule 10, rule 11 or rule 11A, the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

#### **15. Refusal to allow applicant to sue as indigent person to bar subsequent application of like nature. -**

An order refusing to allow the applicant to sue as [indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).] shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right; [Provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow,] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2. 1977).] the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as an [indigent person.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " pauper" (w.e.f. 1.2.1977).]

High Court Amendment-[Rajasthan].-(a) Rule 15 shall be re-numbered as rule 15(1).(b) The following shall be added as rule 15 (2):"15. (2) Nothing in sub-rule (1) shall prevent the Court while rejecting an application under rule 5 or refusing an application under rule 7 from granting time to the applicant to pay the requisite Court-fee within a time to be fixed by the Court; and upon such payment the suit shall be deemed to have been instituted on the date on which the application was presented."-(14-8-1954).

#### **15A. [ Grant of time for payment of court-fee.-**

Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in\*\*\*\* rule 15 with in that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **16. Costs. -**

The costs of an application for permission to sue as an [indigent person] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for "pauper" (w.e.f. 1.2.1977).] and of an inquiry into indigency shall be costs in the suit.

## **17. [ Defence by an indigent person. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]-**

Any defendant, who desire to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.

## **18. Power of Government to provide for free legal services to indigent persons. -**

(1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons. (2) The High Court may, with previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which, such services may be rendered.]

High Court Amendments-Rules 17 and 18-[Andhra Pradesh].-In Order 33, after rule 16, the following rules shall be added, namely:"17. In every case, where a person is suing as a pauper, the Counsel appearing for him shall file, along with his vakalatnama, a certificate stating the fee, if any, he has actually received and/or has stipulated to receive from the pauper or on his behalf in the suit and if, upon such a certificate, the Court is satisfied that his means are such that he ought not to continue to sue as a pauper or that he is being financed by a third party, it shall be open to the Court to dispauper such a person.18. Where the pauper is unable to engage a Counsel, the Court may assign an advocate or pleader to assist him.19. It shall be the duty of the Advocate or Pleader who may be assigned by the Court to assist a pauper to see that notices are served, summonses issued or petition presented only on good and sufficient grounds and he shall also report to the Court every six months the progress of the suit.20. After a person has been granted leave to sue as a pauper, no person shall take, except in pursuance of an agreement as certified to Court under rule 17, or agree to take or seek to obtain from him, any fee, profit or reward, for the conduct of his business in the Court:Provided that, notwithstanding anything herein contained, the Court shall have power to award costs against the adverse party or out of the property recovered in the suit and to direct the payment thereof to the Advocate or Pleader representing the pauper.21. The word "suit" in these rules includes "appeal".-(9-4-1958).[Bombay].-(i) In Order XXXIII, for the existing rule 17 and its marginal note, substitute the following rule and marginal note:"17. Defence by an indigent

person.-Any defendant, who desires to plead a set off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this order shall so far as may be, apply to him as if he were, a plaintiff and his written statement were a plaint, and if he is required to issue a third party notice, the third party notice shall also be deemed to be a plaint for the purpose of this rule.(ii) After the existing rule 18 add the following rule with marginal note as rule 19 and the marginal note:"19. A pauper not to compromise suit without leave of Court.-No cause, suit or matter commenced or carried on by a pauper plaintiff or defendant shall be compromised on any account whatsoever without leave first had and obtained from the Judge in Chambers or the Court."-(1-10-1983).[Gujarat].-Add the following Rules:"17. Any person may be allowed to defend as a pauper either before or after he has entered appearance and the rules in this order shall apply to him mutatis mutandis as if he as a plaintiff and his written statement was a plaint.18. No cause, suit or matter commenced or carried on by a pauper plaintiff or defendant shall be compromised on any account whatever without leave first had and obtained from the Court."-(17-8-1961).

## **Order – XXXIV**

### **\*Suits Relating to Mortgages of Immovable Property\***

#### **1. Parties to suits for foreclosure sale and redemption. -**

Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.Explanation.-A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgage need not be joined in a suit to redeem a subsequent mortgage.

#### **2. Preliminary decree in foreclosure suit. -**

(1)In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree-(a)ordering that an account be taken of what was due to the plaintiff at the date of such decree for-(i)principal and interest on the mortgage,(ii)the costs of suit, if any, awarded to him, and(iii)other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security, together with interest thereon; or(b)declaring the amount so due at that date, and(c)directing-(i)that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and(ii)that, if

payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.(2)The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.(3)Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights, of any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10 as the case may be, of Appendix D with such variations as the circumstances of the case may require.

High Court Amendments-[Orissa].-Same as that of Patna. J 1[Patna].-In Order 34, rule 2(2) insert the words "of its own motion or" after the words "the Court may".-(7-1-1936).

### **3. Final decree in foreclosure suit. -**

(1)Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree-(a)ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary-(b)ordering him to re-transfer at the cost or the defendant the mortgaged property as directed in the said decree, and also, if necessary-(c)ordering him to put the defendant in possession of the property.(2)Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in his behalf, pass a final decree declaring that the defendant and all persons claiming through or under him or debarred from all right to redeem the mortgaged property and also, if necessary ordering the defendant to put the plaintiff in possession of the property.(3)On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

### **4. Preliminary decree in suit for sale. -**

(1)In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.(2)The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any any time before a final decree for sale is passed, extend the time fixed for

the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.(3)Power to decree sale in foreclosure suit.-In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in all mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.(4)Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No.11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

High Court Amendments-[Allahabad].-Order 34, rule 4(2).-After the words "the Court may" insert the words "of its own motion, or".-(24-7-1926).[Calcutta].-Re-number sub-rules (3) and (4), rule 4, Order 34 as sub-rules (4) and (5) respectively and insert the following as sub-rule (3):"(3) The Court may, in its discretion direct in the decree for sale that if the proceeds of the sale are not sufficient to pay the mortgage debt, the mortgagor shall pay the balance personally."[Gauhati].-Same as that of Calcutta.

## **5. Final decree in suit for sale. -**

(1)Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass final or, if such decree has passed, an order-(a)ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and if necessary-(b)ordering him to transfer the mortgaged property as directed in the said decree, and, also, if necessary-(c)ordering him to put the defendant in possession of the property.(2)Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under subrule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent, of the amount of the purchase-money paid into Court by the purchaser.Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent thereof.(3)Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-In Order 34, rule 5(3) between the words "in this behalf" and "pass a final decree", insert the words "after notice to all parties".-(9-6-1959).[Madras].-For Order 34, rule 5(3) substitute:-"Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this

behalf and after notice to all the parties, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4."

## **6. Recovery of balance due on mortgage in suit for sale. -**

Where the net proceeds of any sale held under [rule 5] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " the last preceding rule" (w.e.f. 1.2.1977).] are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

## **7. Preliminary decree is redemption suit. -**

(1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree-(a) ordering that an account be taken of what was due to the defendant at the date of such decree for-(i) principal and interest on the mortgage, (ii) the costs of suit, if any, awarded to him, and (iii) other costs, charges and expenses properly incurred by him up to the date, in respect of his mortgage security, together with interest thereon; or (b) declaring the amount so at that date; and (c) directing-(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses and provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary put the plaintiff in possession of the property; and (ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges expenses and interest, the defendant shall be entitled to apply for a final decree-(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgage property be, sold, or (b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property. (2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure of sale, as the case may be, extend due in respect of subsequent costs, charges, expenses and interest.

## **8. Final decree in redemption suit. -**

(1) Where, final decree debarring the plaintiff from all right to redeem the mortgaged property has

been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made under by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order-(a)ordering the defendant to deliver up the documents referred to in the preliminary decree, and, if necessary,-(b)ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree, and also, if necessary,-(c)ordering him to put the plaintiff in possession of the property.(2)Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff in addition to the amount mentioned in sub-rule (1), deposits in the Court for payment to the purchaser a sum equal to five per cent, of the amount of the purchase-money paid into by the purchaser. Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent, thereof.(3)Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,-(a)in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or(b)in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

## **8A. Recovery of balance due on mortgage in suit for redemption. -**

Where the net proceeds of any sale held under [rule 8] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " the last preceeding rule" (w.e.f. 1.2.1977).] are found insufficient to pay the amount due to the defendant, the Court, [on application by him in execution] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " on application by him" (w.e.f. 1.2.1977).], may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.

## **9. Decree where nothing is found due or where mortgagee has been overpaid. -**

Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff and amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.



## **10. Costs of mortgagee subsequent to decree. -**

In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment:[Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

### **10A. [Power of Court to direct mortgagee to pay Mesne profits. -**

Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendment-[Bombay].-For the existing rule 10-A, the following rule shall be substituted, namely:"10-A. Costs of mortgage subsequent to decree.-In mortgage suit where under the mortgage the possession of the mortgaged property is with the mortgagee, the mortgagor may tender or deposit, before or at the time of the institution of the suit, or during the pendency of the same, the sum due on the mortgage. The tender by the mortgagor must be in writing. Notice of any such deposit shall be given by the Court to mortgagee. If the sum so tendered or deposited is in the opinion of the Court, substantially sufficient to satisfy the mortgage, the Court shall direct the mortgagee to pay to the mortgagor, mesne profits as may be determined from the date of such tender or notice of deposit till the actual delivery of possession by the mortgagee to the mortgagor."-(31-12-1987).

## **11. Payment of interest. -**

In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:-(a)interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage-(i)on the principal amount found or declared due on the mortgage,-at the rate payable on the principal, or, where such rate at the Court deems reasonable and,(iii)on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,-at the rate agreed between the parties, or, failing such rate, at such rate not

exceeding six per cent, per annum as the Court deems reasonable; and(b)subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at the such rate as the Court deems reasonable.

## **12. Sale of property subject to prior mortgage. -**

Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

## **13. Application of proceeds. -**

(1)Such proceeds shall be brought into Court and applied as follows:- first, in payment of all expenses incident to the sale or properly incurred in any attempted sale; secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs properly incurred in connection therewith; thirdly, in payment of all interest due on account of the mortgage is consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made; fourthly, in payment of the principal money due on account of that mortgage; and lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.(2)Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882 (4 of 1882).

## **14. Suit for sale necessary for bringing mortgaged property to sale. -**

(1)Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.(2)Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882 (4 of 1882), has not been extended.

High Court Amendments-[Kerala].-In Order 34, rule 14, sub-rule (2) shall be omitted.-(9-6-1959).Order 34, Rule 14-A[Bombay].-In Order 34, after the existing rule 14, insert the following rule with marginal note as new rule 14-A and its marginal note:"14-A. Special provisions regarding a composite decree combining in itself a preliminary as well as a final decree.-(1) Notwithstanding anything hereinbefore contained, where the sale of any mortgaged property is decreed under any composite decree which combines in itself a preliminary as well as a final decree as per compromise between the parties or as required or permissible under any special law or under an order, award or adjudication which is deemed to be a decree of a civil Court, or which is required to be executed as a decree or as if it is a decree of a civil Court, and the judgment-debtor

(mortgagor), before the day fixed in that behalf or at any time before the confirmation of the sale made in pursuance of such decree, order, award or adjudication, makes payment into Court of all amounts due from him to the decree-holder (mortgagee) on that date, under the said decree, order, award or adjudication, including all subsequent costs, charges, expenses and interest, and also deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase money paid into Court by the purchaser, the Court shall, on application made by the judgment-debtor (mortgagor) in this behalf, set aside the sale and mark the decree, order, award or adjudication as satisfied, and pass an order(a) ordering the decree-holder (mortgagee) to deliver up to the judgment-debtor (mortgagor) or his nominee, all documents in his possession or power relating to the mortgaged property, and, if necessary,(b) ordering him to re-transfer the mortgaged property to the judgment-debtor (mortgagor) or his nominee at his cost free from the mortgage and from all encumbrances, created by the decree-holder (mortgagee), or any person claiming under him, or where the decree-holder (mortgagee) claims by derived title, by those under whom he claims, and also if necessary,(c) ordering him to put the judgment-debtor (mortgagor) or his nominee in possession of the property.(2) Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him together with a sum equal to five per cent. thereof.(3) The Court may, upon good cause shown and upon terms to be fixed by the Court, from time to time at any time before the sale is confirmed, extend the time fixed for the payment of the amount due under the decree, order, award or adjudication, including all subsequent costs charges, expenses and interest. "-(1-10-1983).

## **15. Mortgages by the deposit of title deeds and charges. -**

(1)All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882 (4 of 1882);(2)[ Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendment-[Allahabad].-In Order 34, rule 15, read rule 15 as rule 15(1) and the following as rule 15 (2):"(2) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that very decree."-(17-1-1953).[Kerala].-For Order 34, substitute the following:-"ORDER 34SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY1. Parties to suits for foreclosure, sale and redemption.-Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.Explanation.-A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.2. Decree in foreclosure suits.-(1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a de\_ :ee(a) declaring the amount due to the plaintiff on the date of such decree for-(i) principal and interest on the mortgage;(ii) the costs of the suit, if any, awarded to him; and(iii) other costs, charges and expenses properly incurred by him upto that date in respect of his mortgage-security, together with interest thereon; and(b) directing:(i) that, if the defendant pays into Court the amount so declared due with future interest and subsequent costs as

are mentioned in rule 7 on a day within six months from the date of the decree to be fixed by the Court, the plaintiff shall deliver upto the defendant, or to such persons as he appoints, all documents in his possession or power relating to the mortgaged property and shall, if so required, re-transfer the property to the defendant at the cost of the defendant free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him or, where the plaintiff claims by derived title by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and(ii) that, if such payment is not made on or before the day fixed by the Court, the defendant and all persons claiming through or under him shall be debarred from all right to redeem the property and also, if necessary, the defendant shall put the plaintiff in possession of the property.(2) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the right of, any such mortgagees are joined as parties, the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.(3) On the expiry of the date fixed for payment of the amount declared due to, the mortgagee, all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.3. Decree in suit for sale.-(i) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a) and (b)(i) of sub-rule (1) of rule 2 and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after deducting therefrom the expenses of the sale) be applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same; and that, in case the net proceeds of such sale be insufficient to pay the amount due to the plaintiff, the balance, if legally recoverable from the defendant otherwise than out of the property sold be paid by the defendant personally.(ii) In a suit for foreclosure, if the plaintiff succeeds, and the mortgage is an anomalous mortgage, the Court may, at the instance of the plaintiff or of any other person interested either in the mortgage money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.(iii) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11 as the case may be, of Appendix D, with such variations as the circumstances of the case may require.4. Decree in redemption suit.-In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree(a) declaring the amount due to the defendant at the date of such decree for:-(i) principal and interest on the mortgage;(ii) the costs of the suit, if any, awarded to him;(iii) other costs, charges and expenses properly incurred by him upto that date, in respect of his mortgage-security, together with interest thereon; and(b) directing:(i) that, if the plaintiff pays into Court the amount so declared due with subsequent interest and costs as are mentioned in rule 7, on a day within six months of the decree to be fixed by the Court, the defendant shall deliver upto the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff at his cost, free from the mortgage and from all

encumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims and shall, if necessary, put the plaintiff in possession of the property; and(ii) that, if such payment is not made on or before the date so fixed, the plaintiff shall in the case of a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, be debarred from all rights to redeem the property and also, if necessary, put the defendant in possession of the mortgaged property; and that if desired by the defendant in the suit itself, in the case of any mortgage other than a usufructuary mortgage, a mortgage by conditional sale or such an anomalous mortgage as aforesaid, the mortgaged property or a sufficient portion thereof be sold and the proceeds of the sale (after deducting therefrom the expenses of the sale) be applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same and that, in case the net proceeds of such sale be insufficient to pay the amount due to the defendant, the balance be paid by the plaintiff personally if the balance is legally recoverable from the plaintiff otherwise than out of the property sold.<sup>5</sup> Date of payment.-The Court may, upon good cause shown and upon such terms, if any, as it thinks fit, postpone the date fixed for payment under this Order from time to time.<sup>6</sup> Decree where nothing is found due or where mortgage has been overpaid.-Notwithstanding anything hereinbefore contained, if it appears in a redemption suit nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.<sup>7</sup> Costs of mortgagee subsequent to decree.-In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage money such costs of the suit and other costs, charges and expenses, as have been properly incurred by him since the decree for foreclosure, sale or redemption up to the time of actual payment.<sup>8</sup> Sale of property subject to prior mortgage.-Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.<sup>9</sup> Application of proceeds.-(i) Such proceeds shall be brought into Court and applied as follows: first, in payment of all expenses incident to the sale or properly incurred in any attempted sale; secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith; thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the suit in which the decree directing the sale was made; fourthly, in payment of the principal money due on account of the mortgage; and lastly, the residue, if any, shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt. (ii) Nothing in this rule or in rule 8, shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882 (Central Act 4 of 1882).<sup>10</sup> Suit for sale necessary for bringing mortgaged property to sale.-Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.<sup>11</sup> Mortgages by the deposit of title deeds and charges.-All the provisions contained in this Order

which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title deeds within the meaning of section 58 and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882."-(Notification No. D1-22480/85, dated 16-12-1989).

## **Order – XXXV**

### **Interpleader**

#### **1. Plaint in interpleader-suit. -**

In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for complaints, state-(a)that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;(b)the claims made by the defendants severally; and(c)that there is no collusion between the plaintiff and any of the defendants.

#### **2. Payment of thing claimed into Court. -**

Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

#### **3. Procedure where defendant is suing plaintiff. -**

Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

#### **4. Procedure at first hearing. -**

(1)At the first hearing the Court may-(a)declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or(b)if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.(2)Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.(3)Where the admissions of the parties do not enable the Court so to adjudicate, it may direct-(a)that an issue or issues between the parties be framed and tried, and(b)that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff, and shall proceed to try the suit in the ordinary manner.

## **5. Agents and tenants may not institute interpleader suits. -**

Nothing in the Order shall be deemed to enable agents to sue their principles, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords. Illustrations (a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C. (b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

## **6. Charge for plaintiff's costs. -**

Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

# **Order – XXXVI**

## **Special Case**

### **1. Power to state case for Court's opinion. -**

(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question, - (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or (b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement. (2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

### **2. Where value of subject-matter must be stated. -**

Where the agreement is for the delivery of any property; or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

### **3. Agreement to be filed and registered as suit. -**

(1) The agreement if framed in accordance with the rules hereinbefore contained, may be filed [with an application] [Inserted by Act No. of 104 of 1976 (w.e.f. 1.2.1977).] in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the

amount or value of the subject-matter of the agreement.(2)[The application] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " The agreement" (w.e.f. 1.2.1977).] when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom [the application was presented.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 " it was presented" (w.e.f. 1.2.1977).]

#### **4. Parties to be subject to Court's jurisdiction. -**

Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

#### **5. Hearing and disposal of case. -**

(1)The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.(2)Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit-(a)that the agreement was duly executed by them,(b)that they have a bona fide interest in the question stated therein, and(c)that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

#### **6. [ No appeal from a decree passed under rule 5. -**

No appeal shall lie from a decree passed under rule 5.][Inserted by Act No 104 of 1976 (w.e.f. 1.2.1977).]

### **Order – XXXVII**

#### **Summary Procedure**

#### **1. [Courts and classes of suits to which the Order is to apply. -**

(1)This Order shall apply to the following Court, namely:-(a)High Courts, City Civil Courts and Courts of Small Causes; and(b)other Courts;Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.(2)Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely:-(a)suits upon bills of exchange, hundies and promissory notes;(b)suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,-(i)on a written contract, or(ii)on an enactment, where the sum sought to



be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or(iii)on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 1 (w.e.f. 1.2.1977).]

High Court Amendment-[Bombay].-In Order 37, substitute the following sub-rule (1) for the existing sub-rule (1) of rule 1:"1. (i) This Order shall apply to the following Courts, namely:(a) High Courts, City Civil Courts and Courts of Small Causes; and(b) such other Courts as may be specifically empowered in this behalf by the High Court from time to time by a notification in the Official Gazette:Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories or suits as it deems proper and may also from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper."-(1-10-1983).

## **2. [Institution of summary suits. -**

(1)A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,-(a)a specific averment to the effect that the suit is filed under this Order;(b)that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint;(c)the following inscription, immediately below the number of the suit in the title of the suit, namely:-"(Under Order 37 of the Code of Civil Procedure, 1907)."(2)the summons of the suit shall be in Form No. 4 in Appendix B or in such other form as may, from time to time, be prescribed.(3)The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 2 (w.e.f. 1.2.1977).]

## **3. [Procedure for the appearance of defendant. -**

(1)In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.(2)Unless otherwise order, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.(3)On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by pre-said letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.(4)If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B for such other Form as may be prescribed from time to time, returnable not less than ten days from the date

of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.(5)The defendant may, at any time within ten days from service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:Provided further that, where a part of the amount claimed by the the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.(6)At the hearing of such summons for judgment,-(a)if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or(b)if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security with the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or judge, the plaintiff shall be entitled to judgment forthwith.(7)The Court or Judge may, for sufficient cause shown by the defendant, execute the delay of the defendant in entering an appearance or in applying for leave to defend the suit.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 3 (w.e.f. 1.2.1977).]

#### **4. Power to set aside decree. -**

After decree for the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

#### **5. Power to order bill, etc., to be deposited with officer of Court. -**

In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

#### **6. Recovery of cost of noting non-acceptance of dishonoured bill or note. -**

The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

## 7. Procedure in suits. -

Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

Order 37-A High Court Amendment-[Karnataka].-After Order XXXVII and before Order XXXVIII insert the following as Order XXXVII-A: "ORDER XXXVII-A Interlocutory applications. 1. An interlocutory application means an application to the Court in any suit, appeal or proceeding already instituted in such Court other than an application for execution of a decree, or order or for review of judgment or for leave to appeal. 2. Except where otherwise prescribed by rules or otherwise provided by any law for the time being in force, an interlocutory application shall state only the order prayed for and shall not contain any statement of facts or argumentative matter. Every application in contravention of this rule shall be returned for amendment or rejected. 3. Every interlocutory application shall be supported by an affidavit. Where, however, the facts on which the application is based appear from the records in Court or relate to any act or conduct of the applicant's pleader himself, the Court may permit a memorandum of facts signed by the applicant's pleader to be filed instead of an affidavit. 4. Any fact required to be proved upon an interlocutory proceeding shall, unless otherwise prescribed by rules, or ordered by Court, be proved by affidavit, but the Judge may in any case direct evidence to be given orally, and thereupon the evidence shall be recorded and exhibits marked in the same manner as in a suit."-(R.O.C. No. 2526/1959, dated 9-2-1967).

## Order – XXXVIII

### Arrest and Attachment before judgment Arrest before judgment

#### 1. Where defendant may be called upon to furnish security for appearance. -

Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise, - (a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him - (i) has absconded or left the local limits of the jurisdiction of the Court, or (ii) is about to abscond or leave the local limits of the jurisdiction of the Court his property or any part thereof, or (b) that the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security, for his appearance: Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

## **2. Security. -**

(1)Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have paid by the defendant under the provision to the last preceding rule.(2)Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

## **3. Procedure on application by surety to be discharged. -**

(1)A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.(2)On such application being made, the Court shall summon the defendant to appear or, if it thinks fit may issue a warrant for his arrest in the first instance.(3)On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

## **4. Procedure where defendant fails to furnish security or find fresh security. -**

Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:Provided also that no person shall be detained in prison under this rule after he has complied with such order.**Attachment Before Judgment**

## **5. Where defendant may be called upon to furnish security for production of property. -**

(1)Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-(a)is about to dispose of the whole or any part of his property, or(b)is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.(2)The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.(3)The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.(4)[ If an order of attachment is made without complying with the provisions of

sub-rule (1) of this rule such attachment shall be void.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **6. Attachment where cause not shown or security not furnished. -**

(1)Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.(2)Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

High Court Amendment-[Bombay].-In Order XXXVIII, rule 6, for the existing sub-rule (2) substitute the following as sub-rule (2):"(2) Where the defendant shows such cause or furnishes the required security'or gives an undertaking to the Court to do or not to do a thing, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit."-(1-10-1983).

## **7. Mode of making attachment. -**

Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

## **8. [ Adjudication of claim to property attached before judgment. -**

Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudicated of claims to property attached in execution of a decree for the payment of money.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 8 (w.e.f. 1.2.1977).]

## **9. Removal of attachment when security furnished or suit dismissed. -**

Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.

## **10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale. -**

Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

## **11. Property attached before judgment not to be re-attached in execution of decree. -**

Where property is under attachment by virtue of the provisions of this order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a reattachment of the property.

### **11A. . [Provisions applicable to attachment. -**

(1)The provisions of this Code applicable to an attachment made in execution of a decree shall so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.(2)An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

Order 38, Rule 11-BHigh Court Amendment-[Madras].-In Order 38, after Rule 11-A, insert the following rule as rule 11-B:"11-B. Order of attachment to be communicated to the Registering Officer.-Any order of attachment passed under rule 5 or 6 of this Order raising the attachment passed under rule 9 of this Order shall be communicated to the Registering Officer within the limits of whose jurisdiction the whole or any part of the immovable property comprised in such order is situate. "-(29-6-1987).

## **12. Agricultural produce not attachable before judgment. -**

Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

## **13. Small Cause Court not to attach immovable property. -**

Nothing in this Order shall be deemed to empower any Court of Small Causes to make order for the attachment of immovable property.

High Court Amendment-[Kerala].-In Order 38, rule 13, for the words "Court of Small Causes" the words "Court exercising Small Cause jurisdiction" shall be substituted.-(9-6-1959).

## **Order – XXXIX**

### **Temporary Injunctions and Interlocutory OrdersTemporary Injunctions**

## 1. Cases in which temporary injunction may be granted. -

Where in any suit it is proved by affidavit or otherwise-(a)that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or(b)that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for " defraud" (w.e.f. 1.2.1977).] his creditors,(c)[ that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] as the Court thinks fit, until the disposal of the suit or until further orders.

High Court Amendments-[Allahabad].-In clause (a) the words "or wrongfully sold in execution of a decree" and in the last para, the word "sale" after the words "damaging, alienation", which were deleted by a former amendment, have now been restored.-(7-12-1929 and 12-8-1944).[Andhra Pradesh].-For Order 39, rule 1, substitute the following:-"1. Where in any suit it is proved by affidavit or otherwise(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors; or(c) that the defendant threatens to dispossess the plaintiff, or otherwise cause injury or loss to the plaintiff, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alientation, sale, removal or disposition of the property, or dispossessing or otherwise causing injury or loss as the Court thinks fit, until the disposal of the suit or until further orders."-(26-7-1956).[Calcutta].-In Order 39, re-number rule 1 as rule 1(1) and add the following as sub-rules (2) and (3):"(2) In case of disobedience, or of breach of the terms of such temporary injunction or order, the Court granting the injunction or making such order may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.(3) The property attached under sub-rule (2) may, when the Court considers it fit so to direct, be sold and, out of the proceeds, the Court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto. "-(3-2-1933).[Gauhati].-Same as that of Calcutta.[Kerala].-Order 39, rule 1 shall be re-numbered as sub-rule (1) thereof and in that sub-rule (1) after the words "wrongfully sold" the words "or delivered" shall be inserted. After sub-rule (1) the following shall be inserted as sub-rule (2):"(2) In case of disobedience of any order passed under sub-rule (1) the Court granting injunction may proceed against the person guilty of such disobedience under sub-rules (3) and (4) of rule 2 of this Order."-(9-6-1959).[Orissa].-Same as that of Patna.[Patna].-(1) Substitute the word "the" for the word "a" in line 1 of clause (a).-(8-10-1937).(2) Add the following provisos after rule 1:"Provided that no such temporary injunction shall be granted if it would contravene the

provisions of section 56 of the Specific Relief Act (Act I of 1877): Provided further that an injunction to restrain a sale, or confirmation of a sale, or to restrain delivery of possession, shall not be granted except in a case where the applicant cannot lawfully prefer, and could not lawfully have preferred, a claim to the property or objection to the sale, or to the attachment preceding it, before the Court executing the decree. "-(8-10-1937).

## **2. Injunction to restrain repetition or continuance of breach. -**

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. (2) The Court may be order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit. [ \* \* \* ] [Sub.rules (3) and (4) omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1.2.1977).]

Madhya Pradesh.- In Order 39, rule 2, in sub-rule (2), insert the following proviso:- "Provided that no such injunction shall be granted-(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963 (47 of 1963); or(b) to stay, the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removable or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any company or Corporation owned or controlled by the State Government; or(c) to stay, any disciplinary proceeding, pending or intended or, the effect of any adverse entry against any, person appointed to public service and post in connection with the affairs of the State including any employee of the company owned or controlled by the State Government; or(d) to restrain any election; or(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished; and any order for injunction granted in contravention of these provisions shall be void."-[M.P. Act 29 of 1984]. Uttar Pradesh.- In rule 2, sub-rule (2), insert the following proviso:- "Provided that no such injunction shall be granted-(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963 (47 of 1963), or(b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any employee including any employee of the Government, or(c) to stay any disciplinary proceeding pending or intended, or, the effect of any adverse entry, against any employee of the Government, or(d) to affect the internal management or affairs of any educational institution including a University, or a Society, or(e) to restrain any election, or(f) to restrain, any auction intended to be made or, the effect of any auction made, by the Government unless adequate security is furnished, or(g) to stay the proceedings of the recovery of any dues recoverable as land revenue unless adequate security is furnished, or(h) in any matter where a reference can be made to the Chancellor of a University under any enactment for the time being in force; and any order for injunction granted in contravention of these provisions shall be



void".-[U.P. Act 57 of 1976 amended by Notification dated 3.10.1981].

## **2A. [Consequence of disobedience or breach of injunction. -**

(1)In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.(2)No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1-2-1977).]

High Court Amendment-[Patna].-In sub-rule (1), insert the words and figures "or section 151" after the word and figure "rule 2" and before the words "or breach of".-(29-8-1979).

## **3. Before granting injunction, Court to direct notice to opposite party. -**

The Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-(a)to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-(i)a copy of the affidavit filed in support of the application;(ii)a copy of the plaint; and(iii)copies of documents on which the applicant relies, and(b)to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

## **3A. [Court to dispose of application for injunction within thirty days. -**

Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty day from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f 1.2.1977).]

High Court Amendment-[Allahabad].-Omit rule 3-A.-(3-10-1981).

#### **4. Order for injunction may be discharged, varied or set aside. -**

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:[Provided that if in an application for temporary injunction or in any affidavit support such application a part has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused under hardship to that party.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

Madhya Pradesh.- In Rule 4:-(i) after the words "by the Court", inserted the words "for reasons to be recorded, either on its own motion or"; and(ii) at the end, add the following proviso:-"Provided also that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is delaying the proceedings or is otherwise abusing the process of Court, it shall set aside the order of injunction."-[M.P. Act 29 of 1984].Uttar Pradesh.- Same as that of Madhya Pradesh except for the word "delaying" substitute "dilating" in the proviso.-[U.P. Act 57 of 1976].

#### **5. Injunction to corporation binding on its officer. -**

An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.**Interlocutory Orders**

#### **6. Power to order interim sale. -**

The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject-matter of such suit or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

#### **7. Detention, preservation, inspection, etc., of subject-matter of suit . -**

(1)the Court may, on the application of any party to a suit, and on such terms as it thinks fit,-(a)make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or, as to which any question may arise therein;(b)for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and(c)for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.(2)The provisions as to

execution of process shall apply, mutatis mutandis, to person authorized to enter under this rule.

High Court Amendment-[Punjab, Haryana and Chandigarh].-Substitute the following for existing sub-rule (1)(a):"(a) make an order for detention, preservation or inspection of any relevant documents or other evidence or of any property which is the subject-matter of such suit or as to which any question may arise therein."-(11-4-1975).

## **8. Application for such orders to be after notice. -**

(1)An application by the plaintiff for an order under rule 6 or rule may be made [\*\*\*\*\*] [The words " after notice to the defendant" omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1977).] at any time after institution of the suit.(2)An application by the defendant for a like order may be made [\*\*\*] [The words " after notice to the defendant" omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1977).]at any time after appearance.(3)[ Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **9. When party may be put in immediate possession of land the subject-matter of suit. -**

Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure; and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

## **10. Deposit of money, etc. in Court. -**

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

High Court Amendment-[Bombay].-In Order XXXIX, after the existing rule 10, add the following rule with marginal note as new rule 11 and its marginal note:"11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court.-(1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or

proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court: Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed."-(1-10-1983).

## **Order – XL**

### **Appointment of Receivers**

#### **1. Appointment of receivers. -**

(1) Where it appears to the Court to be just and convenient, the Court may by order-(a) appointment a receiver of any property, whether before or after decree;(b) remove any person from the possession or custody of the property;(c) commit the same to the possession, custody or management of the receiver; and(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such those powers as the Court thinks fit.(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

High Court Amendments-[Allahabad].-In Order 40, rule 1, in sub-rule (2) after the words "any person", insert a comma and add the words "not being a party to the suit".-(10-7-1943).[Karnataka].-Same as that of Allahabad-(R.O.C. No. 2526/1959, dated 9-2-1967).

#### **2. Remuneration. -**

The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

#### **3. Duties. -**

Every receiver so appointed shall-(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;(b) submit his accounts at such periods and in such form as the Court directs;(c) pay the amount due from him as the Court directs; and(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Delete rule 3 and substitute the following:"3. Every receiver so appointed shall,(a) unless the Court otherwise orders, furnish security in such form and for such amount as the Court thinks fit, duly to account for what he shall receive in respect of the property of which he is appointed a receiver;(b) submit his accounts at such time and in such form as the Court may direct or may be prescribed;(c) pay the amount due from him as the Court directs; and(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Kerala].-Same as in Madras except that for the words "the movable" the words "the immovable" are used.-(9-6-1959).[Madras].-For clauses (a) and (b) of rule 3, the following clauses shall be substituted, namely:"(a) unless the Court otherwise orders, furnish security in the movable property for such amount as the Court thinks fit duly to account for what he shall receive in respect of the property of which he is appointed receiver.(b) submit his accounts at such periods and in such form as may be prescribed."

#### **4. Enforcement of receiver's duties. -**

Where a receiver-(a) fails to submit his accounts at such periods and in such form as the Court directs, or(b) fails to pay the amount due from him as the Court directs, or(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from his or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-In Order XL, for the existing rule 4 and its marginal note, substitute the following as rule 4 and marginal note:"4. Enforcement of receiver's duties.-(1) If a receiver fails to submit his accounts at such periods and in such form as\_ the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time not beyond three years from the date of his discharge by the Court, make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post prepaid for acknowledgment to the surety, if any, for the receiver; but the costs of his appearance shall be borne by the surety himself, unless the Court otherwise directs:Provided that the Court may, where the account is disputed by the parties and is of a complicated nature, or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the receiver, refer the parties to a suit. In all such cases, the Court shall state in writing the reasons for the reference.(3) If the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) of this rule, within the period fixed in the order, the Court may direct such amount to be recovered either from the security (if any) furnished by him under rule 3, or by attachment and sale of his property, or, if the property has been attached under sub-rule (1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him, and shall pay the balance (if any) of the sale proceeds to the

receiver."-(1-10-1983).[Karnataka]:Delete rule 4 and substitute the following:"4. (1) If a receiver fails to submit his accounts at such periods and in such forms as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the manner ordered.(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be parties to such an enquiry. Notice of the enquiry shall be given by registered post to the surety, if any, for the receiver but the cost of his appearance shall be borne by the surety himself unless the Court otherwise directs:Provided that the Court may, where the account is disputed by the parties and is of a complicated nature or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the receiver, refer the parties to a suit. In all such cases the Court shall state in writing its reasons for the reference.(3) If the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) within the period fixed in the order, the Court may direct such amount to be recovered either from the security, if any, furnished by the receiver under rule 3 or by attachment and sale of his property, or if his property has been attached under sub-rule (1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him and shall pay the balance, if any, of the sale proceeds to the receiver."-(R.O.C. 2526/1959, dated 9-2-1967).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-Substitute the following for rule 4:"4. Enforcement of receiver's duties.-(1) If a receiver fails to submit his accounts at such periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post to the surety, if any, for the receiver; but the costs of his appearance shall be borne by the surety himself unless the Court otherwise directs:Provided that the Court may, where the account is disputed by the parties and is of a complicated nature or where it is alleged that the loss has been occasioned to the property by the wilful default or gross negligence of the receiver, refer the parties to a suit. In all such cases the Court shall state in writing its reasons for the reference.(3) If the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) of this rule, within the period fixed in the order, the Court may direct such amount to be recovered either from the security (if any) furnished by him under rule 3, or by attachment and sale of his property, or if his property has been attached under sub-rule (1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him and shall pay the balance (if any) of the sale proceeds to the receiver."

## 5. When Collector may be appointed receiver. -

Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector appoint him to be receiver of such property.

High Court

Amendments-[Karnataka].-Same as that of Madras, except for "Madras Co-operative Societies Act", substitute "an appropriate statute".[Madras].-Substitute the following for rule 5:"5. Where the property is land paying revenue to the Government, or land of which revenue has been assigned or redeemed, and the Court considers that the interest of those concerned will be promoted by the management of a gazetted officer of the revenue department, the Court may, with the consent of the Collector, appoint a gazetted officer of the revenue department to be receiver of such property."-(9-7-1968).Order 40, Rule 6High Court

Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-After rule 5 add the following as rule 6:"6. Where the property belongs to a co-operative society, registered under an appropriate statute or to a member of any such co-operative society and the Court considers that the interest of those concerned, will be promoted by the management thereof by an officer of the co-operative department, the Court may, with the consent of such officer, appoint him to be

receiver of such property."-(R.O.C. No. 2526/1959, dated 9-2-1967).[Madras].-Add the following as rule 6:"6. Where the property belongs to a co-operative society registered under the Madras Co-operative Societies Act or to a member of such co-operative society, and the Court considers that the interest of those concerned will be promoted by the management of an officer of the co-operative department, the Court may, with the consent of the officer, appoint him to be receiver of such property."Order 40, Rule 7[Andhra Pradesh].-After rule 6, add as under:"7. Where a receiver had been appointed by a Court under rule 1 of this Order, no such receiver may be sued by any person whether he is a party to the said suit or not, except with the leave of the Court appointing the receiver or successor Court on an application made in this behalf and the notice of which is served upon the receiver and all other persons who may, in the opinion of the Court, be inserted in the subject-matter of the suit."-(8-1-1987).Order XL-AHigh Court Amendment-[Bombay].-Insert following Order XL-A after Order XL:-"ORDER XL-ACaveat Rules1. Every caveat under section 148-A shall be signed by the caveator or his advocate and shall be in the form prescribed.2. Every caveat shall be presented by the party in person or by his advocate to the



Court or to the Officer authorised to receive the caveat. Where the caveator is represented by an advocate his vakalatnama shall accompany the caveat. When an advocate instructed by a party to act or appear in a matter has not been able to secure a vakalatnama in the prescribed form duly signed by the client, he may file a written statement signed by him stating that he has instructions from or on behalf of his client to act or appear in the matter and also undertaking to file within a week a vakalatnama in the prescribed form duly signed by the party.<sup>3</sup> The caveat presented under rule 2 shall be registered in a caveat register in Form given below. Before an application for any relief is made to the Court in any proceedings, it shall bear an endorsement from the office of the Court whether a caveat has or has not been filed.<sup>4</sup>(1) A copy of the caveat shall be served alongwith the notice required to be served under section 148-A (2).(2) On receipt of the notice of the caveat, the applicant or his advocate shall intimate to the caveator or his advocate, the expenses for furnishing the copies and request him to collect the copies on payment of the said expenses. The said expenses should be at the rate of 25 paise per folio of 100 words inclusive of cost of paper.<sup>5</sup> Every application for any relief in a proceeding should be supported by a statement on oath of the applicant stating that no notice

under section 148-A(2) is received by him or if received whether the applicant has furnished the copies of the application together with the copies of the papers or documents which have been filed or may be filed in support of the application of the caveator as required by section 148-A(4).6. A notice under section 148-A(3) may be served on the caveator or his advocate personally or by post under certificate of posting. The notice sent under certificate of posting at the address furnished by the caveator shall be deemed to be sufficient service on him.7. Where it appears to the Court that the object of granting ad interim relief on the application would be defeated by delay, it may record reasons for such opinion and grant ad interim relief on the application of the applicant till further orders after giving the caveator an opportunity of being heard.(FORM OF CAVEAT)In the Court of .....At .....Suit/Petition/Appeal No..... 20 ...In the matter of Caveat undersection 148-A of the Codeof Civil Procedure..... .....CaveatorPray that no orders be passed without due notice under section 148-A of the Code of Civil Procedure to the caveator abovenamed in any application for.....(state in short reliefs to be prayed for) in Suit/Petition/Appeal No.....of 20....of this Court (or in a Suit/Petition/ Appeal likely to be

filed in this Court)  
 wherein.....is/may be  
 Plaintiff/Petitioner/ Appellant  
 and..... is/may be the  
 Defendant/Respondent.The  
 caveator's address for service  
 is.....The caveator  
 undertakes to the Court to give  
 notice by Registered Post A.D.  
 to.....the  
 Plaintiff/Petitioner/Appellant  
 abovementioned, at the following  
 address.....CaveatorREGISTER  
 OF CAVEAT (o. XL-A, Rule  
 3)COURT OF THE ..... OF  
 .....ATREGISTER OF CAVEAT  
 IN THE YEAR 20 ...{

Serial No.	Date of caveat	Name of caveator and his address for service	Nature of proceeding anticipated by caveator and its number if same if filed	Name of plaintiff Applicant in proceeding in column No. 4	Name of defendant Respondent in proceeding in column No. 4	Date and number of proceeding filed as anticipated by caveator	Date notice served on caveator
1	2	3	4	5	6	7	8
}							

## Order – XLI

### APPEALS FROM ORIGINAL DECREES

#### 1. Form of appeal. What to accompany memorandum. -

(1)Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded:[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court dispense with the filing of more than one copy of the judgment.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (1.2.1977).](2)Contents of memorandum.-The memorandum shall set forth, concisely and under

distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.(3)[ Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-(1) In sub-rule (1) of rule 1, after the proviso, the following Explanation shall be inserted, namely:"Explanation.-The copy of the decree referred to in sub-rule (1) of rule 1 above shall include a deemed decree as provided in Order XX in clause (b) in sub-rule (2) of rule 6-A".-(22-10-1994).(2) Add the following proviso to rule 1, sub-rule (2):"Provided that the Court may, for sufficient reasons, accept a memorandum of appeal without a copy of the decree appealed from if the Counsel for the appellant certifies that the copy has been applied for and has not yet been issued, subject to the copy being filed subsequently within the time granted by the Court."-(13-12-1969).(3) Sub-rule (3) of rule 1 shall be deleted.-(1-1-1994).[Andhra Pradesh].-Substitute the following for'rule 1':" (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by such number of copies of judgment as may be required by the Rules or Notifications issued by the High Court and (unless the appellate Court dispenses with the filing of the decree or judgment or both for the time being) the decree drawn pursuant to the said judgment."-(2-8-1988).[Bombay].-Substitute the following rule as rule 1 for the existing rule 11 in Order XLI:"1. Form of appeal, what to accompany memorandum.-(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded:Provided that where two or more suits have been tried together and a common judgment has been delivered, therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.\*[Explanation.-The copy of the decree-referred to in sub-rule (1) of rule 1 above shall include a deemed decree as provided in Order XX in clause (b) in sub-rule (2) of rule 6-A.](2) Contents of memorandum.-The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit:Provided that the Court may dispense with the deposit or security where it deems fit to do so for sufficient cause.(4) The appellant shall file along with the memorandum of appeal as many copies thereof on plain paper as there are respondents for being served on the respondents along with the notice of appeal:Provided that the Court in its discretion may permit the appellant to file the necessary number of copies of the memorandum of appeal after the appeal is admitted, within such time as the Court may grant in this behalf."-(1-10-1983 and \*9-12-1987).[Delhi].-Same as that of Punjab-(31-10-1966).[Himachal Pradesh].-Same as that of Punjab-(25-1-1971).[Karnataka].-Add the following to sub-rule (2) of Order 41, rule 1:"The

memorandum shall also contain a statement of the amount or value of the subject-matter in dispute in the Court of first instance and in the appeal and a statement of the amount of Court-fee paid or payable on the appeal together with the provision of law under which it is calculated."-(5-11-1959).[Madras].-(i) For sub-rule (1) substitute the following: "(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer, as it appoints in this behalf. The memorandum of appeal shall be accompanied by a certified copy of the decree appealed from and (unless the Appellate Court dispenses therewith) by a certified copy of the judgment on which it is founded and by such number of typewritten or cyclostyled or printed or mechanically reproduced copies of the judgment as are necessary to serve on the respondents to the appeal and four additional copies for the use of the Court. The copies so filed shall be neatly and legibly prepared without any error, of which four copies intended for the use of the Court, shall be on thick paper. In case the judgment is typed or cyclostyled, the four copies intended for the use of the Court must be typed or cyclostyled on one side of the paper only: Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, it shall not be necessary to file more than one set of copies of the judgment as provided for in this rule: Provided further that the Court shall have the copies of the judgment so filed compared with the certified copy of the judgment on payment of the prescribed charges."-(21-8-1983). (ii) Sub-rule (3) omitted.-(21-8-1980).[Patna].-Add the following as further proviso to sub-rule (1): "Provided further that, in appeals from decrees or orders under any special or local Act to which the provisions of Parts II and III of the Limitation Act, 1908, do not apply and in which certified copies of such decrees or orders have not been granted within the time prescribed for preferring an appeal, the appellate Court may admit the memorandum of appeal subject to the production of the copy of the decree or order appealed from within such time as may be fixed by the Court."-(5-4-1961).[Punjab, Haryana and Chandigarh].-To the existing proviso to sub-rule (1), add the following as further proviso to sub-rule (1): "Provided further that the Court may permit the appeal to be filed with true copies duly authenticated by an advocate as correct." [N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]

## **2. Grounds which may be taken in appeal. -**

The appellant shall not except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the Appellate Court in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule: Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

## **3. Rejection or amendment of memorandum. -**

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there. (2) Where the Court rejects any memorandum, it shall record the reasons for such rejection. (3) Where a memorandum of appeal is amended, the

Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

High Court Amendment-[Allahabad].-Substitute the following for rule 3 (1):"3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed or accompanied by the copies mentioned in rule 1 (1), it may be rejected, or where the memorandum of appeal is not drawn up, in the manner prescribed, it may be returned to the appellant for the purpose of being amended, within a time to be fixed by the Court or be amended then and there."-(17-6-1916).

### **3A. . [Application for condonation of delay. -**

(1)When a appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.(2)If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.(3)Where an application has been made under sub-rule (1) the Court shall not made an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

### **4. One of several plaintiff or defendants may obtain reversal of whole decree where it proceeds on ground common to all. -**

Where there are more plaintiff or more defendants then one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.**Stay Of Proceedings And Of Execution**

### **5. Stay by Appellate Court. -**

(1)An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.[Explanation.-An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](2)Stay by Court which passed the decree.-Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on

sufficient cause being shown order the execution to be stayed.(3)No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-(a)that substantial loss may result to the party applying for stay of execution unless the order is made;(b)that the application has been made without unreasonable delay; and(c)that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.(4)[Subject to the provisions of sub-rule (3)] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).], the Court may make an ex parte order for stay of execution pending the hearing of the application.(5)[ Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

High Court Amendments-[Allahabad].-Substitute the following for sub-rule (5) of rule 5, namely:"Notwithstanding anything contained in the foregoing sub-rules, where the appeal is against a decree for payment of money, the appellate Court shall not make an order staying the execution of the decree, unless the appellant shall, within such time as the appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the appellate Court may think fit".-(1-1-1994).[Andhra Pradesh].-Same as that of Madras.[Calcutta].-In sub-rule 1 "but the Appellate Court may, subject to sub-rule (3) of rule 6 of this Order, for sufficient cause order stay of execution of such decree" substituted for "but the....such decree".[Karnataka].-Add the following at the end of sub-rule (1) of rule 5 in continuation:"and may, when the appeal is against a preliminary decree, stay the making of a final decree in pursuance of the said preliminary decree or the execution of any such final decree if already made or when made or stay all or any of the further proceedings to be taken pursuant to such preliminary decree.Nothing herein contained shall affect or limit the inherent power of the Court to stay other proceedings either before it or any Court subordinate to it in appropriate cases."-(5-11-1959).[Kerala].-(1) Same as that of Madras.(2) In sub-rule (3) to clause (c) the following proviso shall be added, namely:-"Provided that in the case of a decree charging immovable properties the appellate Court may, in its discretion, dispense with such security in whole or in part."-(9-6-1959).[Madras].-(1) Delete the full stop at the end of sub-rule (1) and add the following to the sub-rule : "and may, when the appeal is against a preliminary decree, stay the making of a final decree in pursuance of the preliminary decree or the execution of any such final decree, if already made."(2) In sub-rule (1) of rule 5 after the words "but the appellate Court may for sufficient cause order stay of execution of such decree", add the following : "on such terms and conditions as the Court deems fit."(3) Omit sub-rule (5) of rule 5.

## **6. Security in case of order for execution of decree appealed from. -**

(1)Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.(2)Where an order has been made for the sale of immovable

property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

High Court Amendment-[Calcutta].-The following is added as sub-rule (3):"(3) Where no such application has been presented to the Court which made the order, an application for the stay of the sale shall not be entertained by the appellate Court".

## **7. No security to be required from the Government or a public officer in certain cases.-**

[Rep. by the A.O. 1937.]

## **8. Exercise of powers in appeal from order made in execution of decree. -**

The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.**Procedure On Admission Of Appeal**

## **9. Registry of memorandum of appeal. -**

(1)Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.(2)Register of Appeals-Such book shall be called the Register of Appeals.

## **10. Appellate Court may require appellant to furnish security for costs. -**

(1)The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:Where appellant resides out of India-Provided that the Court shall demand such security in all cases in which the appellant is residing out of India, and is not possessed of any sufficient immovable property within India other than the property (if any) to which the appeal relates.(2)Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

High Court Amendment-[Allahabad].-In the proviso to sub-rule (1) of rule 10 substitute the words "the State", for the word "India" where it occurs for the second time.-(1-6-1957).

## **11. Power to dismiss appeal without sending notice to Lower Court. -**

(1)The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.(2)If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on



for hearing, the Court may make an order that the appeal be dismissed.(3)The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.(4)[Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f 1.2.1977).][11A . Time within which hearing under rule 11 should be concluded- Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f 1.2.1977).]

## **12. Day for hearing appeal. -**

(1)Unless the Appellate Court dismisses the appeal under rule 11, it should fix a day for hearing the appeal.(2)Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

## **13. Appellate Court to give notice to Court whose decree appealed from. -**

(1)Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.(2)Transmission of papers to Appellate Court-Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.(3)Copies of exhibits in Court whose decree appealed from-Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

## **14. Publication and service of notice of day for hearing appeal. -**

(1)Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.(2)Appellate Court may itself cause notice to be served-Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.(3)[ The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.(4)Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the

appeal.(5)Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f 1.2.1977).]

High Court Amendments-[Allahabad].-In rule 14 in sub-rule (1), for the words "on his pleader in the Appellate Court", substitute the following:"or on his pleader competent to receive the notice on his behalf."-(21-3-1981).[Andhra Pradesh].-Add the following proviso to sub-rule (1):"Provided that the Appellate Court may dispense with service of notice on respondents against whom the suit has proceeded ex parte in the Court from whose decree the appeal is preferred."[Karnataka].-Same as that of Andhra Pradesh.[Madras].-Insert the following as a proviso to sub-rule (1):"Provided that the Appellate Court may dispense with service of notice on respondents, who have remained absent, against whom the suit has proceeded ex parte in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court."-(17-11-1976).[Orissa].-(1) Add the following as sub-rule (3):"(2-A) Where the passing of an ex parte interlocutory order has, in the opinion of the Court, the effect of causing delay in any proceeding pending in a subordinate Court, notice shall issue simultaneously both to the respondent and to his pleader in the said proceeding in the subordinate Court, fixing a short date for return of the service. If the pleader has been served with the notice but the notice to the respondent is returned unserved and no appearance is made on his behalf the appellate Court may in its discretion declare the service on the pleader to be sufficient service on the respondent and shall intimate the same to the respondent by registered post at the cost of the appellant."-(17-9-1954).\*Re-numbered as sub-rule (2-A)-(14-5-1984).(2) Delete sub-rule (4)-(14-5-1984).Order 41, Rule 14-AHigh Court Amendments-[Kerala].-The following shall be added as rule 14-A:-"14-A. Substitution of letter for notice.-(i) The Court may, notwithstanding anything hereinbefore contained, substitute for notice a letter signed by the Judge or such officer as he may appoint in this behalf, where the respondent is the Presiding Officer of a House of Parliament or of a State Legislature or the Chairman of a Committee thereof, or in the opinion of the Court, of a rank entitling him to such mark of consideration.(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a notice and, subject to the provisions of sub-rule (3), shall be treated in all respects as a notice.(3) A letter so substituted may be sent to the respondent by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the respondent has an agent empowered to accept service, the letter may be delivered or sent to such agent."-(16-7-1963).[Orissa].-Same as that of Patna.-(26-9-1948).[Patna].-Add the following as rule 14-A:"14-A. The Appellate Court may, in its discretion, dispense with the service of notice hereinbefore required on a respondent, or on the legal representative of a deceased respondent, in a case where such respondent did not appear, either at any stage of the proceedings in the Court whose decree is appealed from or in any proceedings subsequent to the decree of that Court and no relief is claimed against such opposite party or respondent or his legal representative either in the original case or appeal."Order 41, Rule 15-AHigh Court Amendment-[Madhya Pradesh].-Insert the following as rule 15-A:-"15-A. Failure to take necessary steps after admission of an appeal in the High Court.-Where, after admission of an appeal in the High Court, the Rules of the High Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where, after due service of a notice intimating the steps to be taken and the date before which they must be taken, the appellant fails to take such steps within the prescribed time, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit."-(16-9-1960).

## **15. Contents of notice. -**

The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard ex parte.

High Court Amendment-[Allahabad].-In sub-rule (1) for the words "on the day fixed, or on any other day to which the hearing may be adjourned" substitute the words .when the appeal is called on for hearing."-(22-12-1951).

Procedure On Hearing

## **16. Right to begin. -**

(1)On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.(2)The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply.

High Court Amendment-[Allahabad].-In sub-rule (1), delete the words "on the day fixed, or on any other day to which the hearing may be adjourned".-(22-12-1951).

## **17. Dismissal of appeal for appellants default. -**

(1)Where on the day fixed, or on any other day which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.[Explanation.-Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f 1.2.1977).](2)Hearing appeal Blex parteB-Where the appellant appears and the respondent does not appear the appeal shall be heard ex parte,

High Court Amendment-[Allahabad].-In sub-rule (1), delete the words "on the day fixed, or on any other day to which the hearing may be adjourned".-(22-12-1951).

## **18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs. -**

Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the costs of serving the notice [or, if the notice is returned unserved, and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray the cost of any further attempt to serve the notice,] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] the Court may make an order that the appeal be dismissed:Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

High Court Amendments-[Allahabad].-In paragraph (1) for the words "where on the day fixed or on any other day to which the hearing may be adjourned", substitute the words "when the appeal is called on for hearing".-(22-12-1951).[N.B.-These High Court Amendments relate to the provisions as existed before the 1999 Amendment Act.]Order 41, Rule 18-A[Bombay].-After the existing rule 18, insert the following rule with marginal note as new rule 18-A and its marginal note:"18-A. Dismissal for want of prosecution.-Where after the admission of an appeal the rules or the special directions of the Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where after due notice intimating the steps to be taken the appellant fails to take such steps within the time prescribed by the rules or allowed by the Court, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit."-(1-10-1983).

## **19. Re-admission of appeal dismissed for default. -**

Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-For the existing rule 19 and its marginal note, substitute the following as rule 19 and its marginal note:"19. Re-admission of appeal dismissed for default.-Where an appeal is dismissed under rule 11, sub-rule (2), or rule 18-A or rule 17 or rule 18, the appellant may apply to the appellate Court for re-admission of the appeal and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or in taking necessary steps in the prosecution of the appeal or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."-(1-10-1983).[N.B.-This High Court Amendment relates to the provisions as existed before the 1999 Amendment Act.][Delhi].-Same as that of Madras.[Gujarat].-Same as that of Madras-(17-8-1961).[Himachal Pradesh].-Same as that of Madras.[Karnataka].-Same as that of Madras-(5-11-1959).[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-In rule 19 (1), Order 41, after the words the figures "rule 11, sub-rule (2)" insert the words and figures "or rule 15-A" followed by a comma.[Madras].-Re-number rule 19 in Order 41 as rule 19 (1) and add the following as sub-rule (2):"(2) The provisions of section 5, Limitation Act, 1908, shall apply to applications under sub-rule (1)."[Punjab].-Same as that of Madras-(15-4-1955).

## **20. Power to adjourn hearing and direct persons appearing interested to be made respondents. -**

(1)[Rule 20 re.numbered as sub.rule (1) by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.(2)[ No

respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **21. Re-hearing on application of respondent against whom Blex parte decree made. -**

Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellant Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Gujarat].-Same as that of Madras-(17-8-1961).[Karnataka].-Same as that of Madras-(5-11-1959).[Kerala].-Same as that of Madras-(9-6-1959).[Madhya Pradesh].-Same as that of Madras-(16-9-1960).[Madras].-Rule 21 shall be re-numbered as sub-rule (1) of that rule and the following shall be added as sub-rule (2), namely: "(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1)."

## **22. Upon hearing respondent may object to decree as if he had preferred a separate appeal. -**

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for certain words (w.e.f. 1.2.1977).] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow. [Explanation.-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2. 1977).] (2) Form of objection and provisions applicable thereto-Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto. (3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent. (4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the

objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.(5)The provisions-relating to appeal by indigent persons shall, so far as they can be made applicable apply to an objection under this rule.

### **23. Remand of case by Appellate Court. -**

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

High Court Amendments-[Allahabad].-In rule 23, after the words "and the decree is reversed in appeal" insert the following words, namely, "or where the Appellate Court while reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, it".And delete the words "the Appellate Court" occurring thereafter and delete also the words "if it thinks fit" occurring after the word "may".-(1-6-1957).[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Substitute the following for rule 23:"Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and whether any further evidence shall or shall not be taken after remand, and shall send a copy of its judgment or order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; the evidence, if any, recorded during the original trial shall subject to all just exceptions, be evidence during the trial after remand."-(5-11-1959).[Kerala].-Same as that of Madras-(9-6-1959).[Madras].-(a) After the words "the decree is reversed in appeal" insert the words "or where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case", and(b) delete the words "if it thinks fit" occurring after the words "the appellate Court may".[Rajasthan].-For rule 23, the following rule shall be substituted, namely:

**23A. [Remand in other cases. - Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 2.2.1977).]**

## **24. Where evidence on record sufficient, Appellate Court may determine case finally. -**

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds.

## **25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from. -**

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (1.2.1977).]

## **26. Finding and evidence to be put on record. Objections to finding. -**

(1)Such evidence and findings shall form part of the record in the suit; and either party may within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.(2)Determination of appeal.-After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

## **26A. [Order of remand to mention date of next hearing. -**

Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.][Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **27. Production of additional evidence in Appellate Court. -**

(1)The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-(a)the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or(aa)[ the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced

by him at the time when the decree appealed against was passed, or] [ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f 1.2.1977).](b)the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.(2)Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

## **28. Mode of taking additional evidence. -**

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

## **29. Points to be defined and recorded. -**

Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.**Judgment In Appeal**

## **30. Judgment when and where pronounced. -**

(1)The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.(2)[Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

## **31. Contents, date and signature of judgment. -**

The judgment of the Appellate Court shall be in writing and shall state-(a)the points for determination;(b)the decision thereon;(c)the reasons for the decision; and(d)where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

High Court Amendments-[Allahabad].-At the end of the rule substitute a semicolon for the fullstop and add the following:"Provided that where the Presiding Judge pronounces his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement."-(14-1-1939).[Andhra Pradesh].-Same as that of Madras.[Bombay].-In rule 31,



substitute a colon for the full stop appearing at the end of the rule and add thereafter the following proviso: "Provided that where the judgment is pronounced by dictation to a shorthand-writer in open Court the transcript of the judgment so pronounced shall, after making such corrections therein as may be necessary, be signed by the Judge or the Judges concerned and shall bear the date of its pronouncement."-(1-10-1983).[Gujarat].-Same as that of Allahabad-(17-8-1961).[Karnataka].-Add the following proviso to rule 31: "Provided that where the Presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand-writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge."-(5-11-1959).[Kerala].-Rule 31 shall be renumbered as sub-rule (1) thereof and the following shall be inserted as sub-rules (2) and (3), namely: "(2) In cases where a judgment is not written by the Judge in his own hand, but dictated and taken down by another verbatim, each page of the judgment shall be initialled by him. (3) Where the judgment is pronounced by dictation to a shorthand-writer in open Court the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge."-(9-6-1959).[Madras].-Substitute the following: "31. The judgment of the Appellate Court shall be in writing and shall state-(a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall bear the date on which it is pronounced and shall be signed by the Judge or the Judges concurring therein: Provided that, where the Presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand-writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge." [Orissa].-Same as that of Allahabad-(21-9-1960).[Patna].-The amendment made to rule 31 is the same as that made by Allahabad, except after the words "signed by the Judge" the words "or by the Judges concurring therein" are inserted.-(21-9-1960).[Rajasthan].-Rule 31 shall be re-numbered as sub-rule (1) of that rule, and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted: "(2) Where the judgment is pronounced by dictation to a shorthand-writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement. (3) In cases where a judgment is not written by the Judge in his own hand, but dictated and taken down verbatim by another person, each page of the judgment shall be initialled by him."-(No. 8, S.R.O. Jodhpur, 23-12-1964).

### **32. What judgment may direct. -**

The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

### **33. Power of Court of Appeal. -**

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties,

although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees] [Rule 30 re-numbered as sub-rule (1) of that rule by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1-2-1977).]:[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.] [Inserted by Act No. 9 of 1992, Section 4, which under Section 1(2) thereof, may be brought into force in any State by the State Government, on an specified date. The Act has been brought into force in Bombay, Bengal U.P., Punjab, Bihar, C.P. Assam, Orissa and Tamil Nadu.]Illustration A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals, and A and Y are respondents. The Appellate Court decides in favour of X. If has power to pass a decree against Y.

### 34. Dissent to be recorded. -

Where the appeal is heard by more judges than one, any judge dissenting from the judgment of the court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.**Decree In Appeal**

### 35. Date and contents of decree. -

(1)The decree of the Appellate Court shall bear date the day of which the judgment was pronounced.(2)The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.(3)The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.(4)The decree shall be signed and dated by the Judge or Judges who passed it:**Judge dissenting from judgment need not sign decree**-Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-Substitute the following as sub-rule (2):"(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and the respondent, their registered addresses, and a clear specification of the relief granted or the adjudication made."-(1-10-1983).[Delhi].-Same as that of Punjab.[Himachal Pradesh].-Same as that of Punjab except that for the words "High Court" the words "Judicial Commissioners Court" are substituted.[Kerala].-(i) In sub-rule (2) the full stop at the end of the rule shall be omitted and the words "in appeal as also in the decree appealed from" shall be inserted.(ii) to sub-rule (4), the following proviso shall be added, namely:"Provided that the provisions of the sub-rule shall not apply to decrees passed by the High Court."-(9-6-1959).[Madras].-Substitute the following for sub-rule (2):"The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, their addresses for service and a clear specification of the relief granted or other adjudication made."[Punjab].-Add

the following proviso to sub-rule (4): "Provided also in the case of the High Court, that the Registrar, or such other officer as may be in charge of the Judicial Department from time to time, shall sign the decree on behalf of the Judge or Judges who passed it; but that such Registrar, or such officer, shall not sign such decree on behalf of a dissenting Judge."

### **36. Copies of judgment and decree to be furnished to parties. -**

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

### **37. Certified copy of decree to be sent to Court whose decree appealed from.**

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A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

High Court Amendment-[Allahabad].-In rule 37, delete the words "and shall be filed with the original proceedings in the suit", and add a new paragraph at the end of the rule: "Where the Appellate Court is the High Court the copies aforesaid shall be filed with the original proceedings in the suit." Order 41, Rule 38 High Court Amendments-[Allahabad].-Add the following rule to Order 41: "38. (1) An address for service filed under Order 7, rule 19, or Order 8, rule 11, or subsequently altered under Order 7, rule 24 or Order 8, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition. (2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the appellate Court to such addresses. (3) Rules 21, 22, 23 and 24 of Order 7 shall apply, so far as may be, to appellate proceedings."-(1-6-1918). [Bombay].-After the existing rule 37, add the following rule and marginal note as new rule 38 and its marginal note: "38. Registered address to hold good during appellate proceedings.-(1) The registered address filed under Order 41, rule 14-A, shall hold good during all appellate proceedings arising out of the original suit or petition, subject to any alteration under sub-rule (3) hereof. (2) Every memorandum of appeal shall state the registered addresses given by the opposite parties in the Court below, and notices and processes shall issue from the appellate Court to such addresses. (3) Sub-rules (2) and (4) (i) and (ii) of rule 14-A of Order VI shall apply, so far as maybe, to the appellate proceedings."-(1-10-1983). [Delhi].-Same as that of Punjab. [Gujarat].-The following be added as rule 38: "38. Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses."-(17-8-1961). [Himachal Pradesh].-Same as that of Punjab. [Orissa].-Same as that of Patna-(26-7-1948). [Patna].-Add the following as rule 38: "38. (1) An address for service filed under Order 7, rule 19, or Order 8, rule 11, or subsequently altered under Order 7, rule 22 or Order 8, rule 12, shall hold good for all notices of appeals and all appellate proceedings arising of the original suit or petition. (2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the appellate

Court to such addresses.(3) Rules 21 and 22 of Order 7, shall apply, so far as may be, appellate proceedings."[Punjab].-Add the following as rule 38:"38. (1) An address for service filed under Order 7, rule 19, or Order 8, rule 11, or subsequently altered under Order 7, rule 24, or Order 8, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.(2) The notice of appeal, and other processes connected with proceedings therein, shall issue to the addresses mentioned in clause (1) above, and service effected at such addresses shall be as effective as if it had been made personally on the appellant or respondent, as the case maybe.(3) Rules 21, 22, 23, 24 and 25 of Order 7 shall apply, so far as may be, to appellate proceedings."Order 41-AHigh Court Amendments-[Allahabad].-Order 41-A, rules 1-11. After Order 41 insert the following as Order 41-A:"ORDER XLI-AAppeals from Original Decrees in the High Court1. Extent.-The rules contained in this Order shall apply to appeals in the High Court notwithstanding anything to the contrary contained in Order 41 or any other Order and the rules contained in Order 41 shall be deemed to have been modified or repealed in their application to such appeals to the extent of their inconsistency or repugnancy or as indicated herein.2. Service of notice on pleader.-If a party appears by a pleader all notices to him shall be served upon such pleader, unless the Court directs otherwise.3. Hearing appeal under rule 11 of Order 41 on date of presentation.-Where a memorandum of appeal is admitted on presentation the Court may, if it deems fit, proceed to hear the appeal under rule 11 of Order 41 on the date on which it is presented.4. Day for appearance of respondent.-Unless the appeal is dismissed under rule 11 of Order 41, a day shall be fixed for the appearance of the respondent and notice thereof shall be given to him. The notice shall call upon him to enter appearance on or before the day so fixed and answer the appeal and inform him that the appeal shall be heard on such day thereafter as may be subsequently notified.5. Mode of entering appearance.-The respondent shall enter appearance by filing a memorandum of appearance in such form as may be prescribed by the Court.6. Notice of day for hearing appeal.-Notice of the day fixed for the hearing of the appeal shall be given by making an entry thereof in the day's cause list of the Court for that day and no other notice to the parties shall be necessary.7: Application of rules 14 and 15 of Order 41.-Rules 14 and 15 of Order 41 shall not apply in so far as they may be inconsistent with the rules of the Court regarding the nature, service or publication of notices.8. Amendment of rules 16, 17 and 18 of Order 41.-The following amendments shall be deemed to have been made in Order 41, namely:(a) In sub-rule (1) of rule 16 for the words "on the day fixed, or on any, other day to which the hearing may be adjourned" the words "when the appeal is called on for hearing" shall be substituted.(b) In sub-rule (1) of rule 17 the words "on the day fixed, or on any other date to which the hearing may be adjourned" shall be omitted.(c) In rule 18 for the words "Where on the day fixed, or on any other day to which the hearing may be adjourned" the words "when the appeal is called on for hearing" shall be substituted.9. Dismissal of appeal for default.-Where default is made in compliance with any rules of the Court which provides for the dismissal of an appeal for such default, the Court may dismiss the appeal.10. Upon hearing, respondent may object to decree as if he had preferred separate appeal.-Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection within one month from the day fixed for his appearance in the notice served upon him in accordance with rule 4, or within such further time as the Court may deem fit to allow.11. Application of rule 31 of Order 41.-Rule 31 of Order 41 shall not apply when the Court dismisses an appeal under rule 11 of that

Order."-(22-12-1951).[Andhra Pradesh].-Same as that of Madras.[Karnataka].-After Order 41, and before. Order 42, add the following Order as Order 41-A:"ORDER XLI-Appeals to the High Court from Original Decrees of Subordinate Courts<sup>1</sup>. Rules contained in Order 41 shall apply to appeals in the High Court of Mysore with the modifications contained in this Order.<sup>2</sup> Where the memorandum' of appeal is presented through an Advocate the memorandum shall state his address for service within the City of Bangalore and such address shall be the address for service of the appellant for all notices and processes issued in or in connection with the appeal or any interlocutory application in the appeal.<sup>3</sup> When any notice issued in an appeal preferred to the High Court fixes a date on which or a period within which the parties served with the notice shall enter appearance in the appeal such notice shall be deemed to be a notice fixing a day for hearing the appeal within the meaning of rule 12 of Order 41.<sup>4</sup> The Court may direct that service of a notice of appeal or other notice of process shall be made by sending the same in a postal registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served which has been filed by him in the lower Court or in the High Court. A notice sent in accordance with this rule shall be deemed to be served on the day on which it would, in ordinary course of post, be delivered to him if the postal cover is not returned within a period of 15 days. When the cover is actually delivered to the party the postal acknowledgment purporting to contain the signature of the party may be deemed to be proof of sufficient service of the notice on the party on the day on which it is actually delivered to him. If the postal cover is returned unserved, any endorsement purporting to have been made thereon by delivery peon or other employee or officer of the postal department shall be prima facie evidence of the statements made therein.<sup>5</sup> If any party or his Advocate to whom a memorandum of cross-objections has been tendered has refused or neglected for three days from the date of such tender to give the acknowledgment mentioned in rule 22(3) of Order 41, the respondent preferring such memorandum of cross-objections may -file into Court an affidavit stating the facts and the Registrar may dispense with service of the copies of the memorandum.<sup>6</sup>(1) Rule 31 of Order 41 shall not apply to the High Court. If judgment is given orally a shorthand note thereof shall be taken by a shorthand-writer appointed for the purpose and a transcript made by him shall be signed or initialled by the Judge or judges concurring therein after making such corrections as may be considered necessary.(2) Sub-rule (4) of rule 35 of Order 41 shall not apply to the High Court. Decrees of the High Court shall be signed by the Registrar, Deputy Registrar or Assistant Registrar, as indicated by the Chief Justice.<sup>7</sup>(1) If an appellant or petitioner fails to show due diligence in making all deposits or payments or in taking all necessary steps as required by the Rules of the High Court in the matter of the preparation of the paper book of any appeal or petition, the Registrar may in his discretion, and shall if the maximum period of extension of the time permissible under sub-rule (9) of rule 1, Chapter IV has expired post the appeal or petition before the -appropriate Bench for orders. The Bench may either grant further time for rectifying the default or omission, or if it thinks fit dismiss the appeal or petition.(2) Any appeal or petition dismissed under sub-rule (1) may be re-admitted by Court if an application for re-admission is made accompanied by a certificate signed by the Registrar certifying that the default or omission for which the order of dismissal was passed has been rectified."-(5-11-1959).[Kerala].-After Order 41, the following Order shall be added, namely:-"ORDER XLI-Appeals to the High Court from Original Decrees of Subordinate Courts"<sup>1</sup>. Modification in first appeals to High Court.-The rules contained in Order 41, shall apply to appeals in the High Court of Kerala with modifications contained in this Order.]<sup>2</sup>(1) Notice fee, etc., to accompany appeal memo.-The memorandum of

appeal shall be accompanied by twelve printed copies of the judgment, one of such copies being a certified copy, the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the rules of Court.(2) Time for respondent's appearance.-Notwithstanding anything contained in rule 22 of Order 41 the period prescribed for entry of appearance by the respondent and filing by him of memorandum of cross-objections, if any, shall, unless otherwise ordered, be thirty days from the service of notice upon him.3.(1) Appearance to be filed by respondent.-If the respondent intends to appear and defend the appeal he shall within the period specified in the notice of appeal enter an appearance by filing in Court a memorandum of appearance.(2) Penalty for default.-If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record.Petition for enlargement of time and procedure thereon.-Provided that a respondent may apply by petition for further time; and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicant's default and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application.4.(1) Address for service.-The memorandum of appeal, and the memorandum of appearance shall state an address for service within the town of Ernakulam at which service of any notice, order or process may be made on the party filing such memorandum.(2) When party appears in person or by pleader.-If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred:Provided that if such party subsequently appears by a pleader, he shall state in the vakalat an address for service within the town of Ernakulam and shall give notice thereof to each party who has appeared.(3) Service at pleader's address.-If a party appears by a pleader, his address for service shall be that of his pleader, and all notices to the party shall be served on his pleader at that address.5. Service by registered post.-The Court may direct that service of a notice of appeal or other notice or process shall be made by sending the same in a registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served, which has been filed by him in the lower Court:Provided that, after a party has given notice of an address for service in accordance with rule 4, service of any notice or process shall be made at such address.6. Notice to respondents appearing separately.-If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately.7. Procedure where record not translated and printed before hearing.-(1) If, upon a case being called on for hearing, by the Court, it appears that the record has not been translated or printed in accordance with the rules of Court, the Court may dismiss the appeal or may adjourn the hearing and direct the party in default to pay costs, or may make such order as it thinks fit.(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers.(3) When an appeal is dismissed under sub-rule (1), the appellant may apply to the Court for re-admission of the appeal; and when the Court is satisfied that there was sufficient cause for default, it shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."-(20-1-1970).8. Costs of application and of adjournment.-When costs are awarded, unless the Court otherwise orders, the costs of a party appearing upon any application before the Registrar or the Court shall be Rs. 15, and the costs of appearing when the appeal is in the daily cause list for final hearing and is adjourned shall be Rs. 30. At the request of any party the Registrar shall cause the order to be drawn up and the said costs

to be inserted therein. **Memorandum of Objections**9.(1) Copies of memo. of objections when to be filed.-If the acknowledgment mentioned in rule 22(3) of Order 41 is not filed, the respondent shall together with the Memorandum of Objections file so many copies thereof as there are parties affected thereby.(2) Prescribed fees for service.-The prescribed fees for service shall be presented together with the memorandum to the Registrar."-(9-6-1959).[Madras].-Add the following:"ORDER XLI-AAppeals to the High Court from Original Decrees of Subordinate Courts1. The rules contained in Order 41 shall apply to appeals in the High Court of Judicature at Madras with the modifications contained in this Order.2.(1) The memorandum of appeal shall be accompanied by twelve printed copies of the judgment, one of such copies being a certified copy, the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the rules of Court.(2) Notwithstanding anything contained in rule 22 of Order 41 the period prescribed for entry of appearance by the respondent and filing by him of memorandum of cross objections, if any, shall, unless otherwise ordered, be thirty days from the service of notice upon him.3.(1) If the respondent intends to appear and defend the appeal he shall, within the period specified in the notice of appeal, enter an appearance by filing in Court a memorandum of appearance.(2) If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record:Provided that a respondent may apply by petition for further time, and the Court may thereupon make such orders as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicant's default, and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application.4.(1) The memorandum of appeal and memorandum of appearance shall state an address for service within the city of Madras at which service of any notice, order or process may be made on the party filing such memorandum.(2) If a party appears in person, the address for service may be within the local limits or the jurisdiction of the Court from whose decree the appeal is preferred:Provided that if such party subsequently appears by a pleader, he shall state in the vakalat an address for service within the city of Madras, and shall give notice thereof to each party who has appeared.(3) If a party appears by a pleader, his address for service shall be that of his pleader, and all notices to the party shall be served on his pleader at that address.5. The Court may direct that service of a notice of appeal or other notice or process shall be made by sending the same in a registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served which has been filed by him in the lower Court: Provided that, after a party has given notice of an address for service in accordance with rule 4, service of any notice or process shall be made at such address.6. All notices and processes, other than a notice of appeal, shall be sufficiently served if left by a party or his pleader, or by a person employed by the pleader, or by an officer of the Court, between the hours of 11 A.M. and 6 P.M. at the address for service of the party to be served.7. Notices which may be served by a party or his pleader under rule 6, or which are sent from the office of the Registrar may, unless the Court otherwise directs, be sent by registered post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof and the posting thereof shall be a sufficient service.8. If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondent's as appear separately.9. A list of all cases in which notice is to be issued to the respondent shall be affixed to the Court notice board after the case has been registered.10.(1) If

upon a case being called on for hearing by the Court, it appears that the record has not been translated and printed in accordance with the rules of the Court, the Court may hear the appeal or dismiss it, or may adjourn the hearing and direct the party in default to pay costs, or may make such orders as it thinks fit.(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers.<sup>11</sup> When costs are awarded, the costs of a party appearing upon any application before the Registrar shall be Rs. 25. At the request of any party the Registrar shall cause the order to be drawn up and the said costs to be inserted therein. (Rule 11 as amended with effect from 8-4-1964).

### **Memorandum of**

**Objections**<sup>12</sup>.(1) If the acknowledgment mentioned in rule 22(3) of Order 41 is not filed, the respondent shall together with the memorandum of objections file so many copies thereof as there are parties affected thereby.(2) The prescribed fees for service shall be presented together with the memorandum to the Registrar.<sup>13</sup> If any party or the pleader of any party to whom a memorandum of objections has been tendered has refused or neglected for three days from the date of tender to give the acknowledgment mentioned in rule 22 (3) of Order 41, the respondent may file an affidavit stating the facts and the Registrar may dispense with the service of the copies mentioned in rule 12(1).<sup>14</sup> Rule 31 of Order 41 shall not apply to the High Court. If a judgment is given orally a shorthand note thereof shall be taken by an officer of the Court and transcript made by him shall be signed or initialled by the Judge or Judges concurring therein after making such corrections as may be considered necessary.

Order XLI-B High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Madras].-After Order 41-A, insert the following:-"ORDER XLI-B Letters Patent Appeal<sup>1</sup>. The rules of Order 41-A shall apply, so far as may be, to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court: Provided that it shall not be necessary to file copies of the judgment and decree appealed from.<sup>2</sup> Notice of the appeal shall be given in manner prescribed by Order 41-A, rule 6, or if the party to be served has appeared in person in manner prescribed by rule 5 of the said Order."

## **Order – XLII**

### **APPEALS FROM APPELLATE DECREES**

#### **1. Procedure. -**

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

High Court Amendments-[Allahabad].-For rule 1, substitute the following:"1. Procedure.-The rules of Order 41 and Order 41-A shall apply, so far as may be, to appeals from appellate decrees, subject to the following proviso.-(17-6-1916 and 22-12-1951).Every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and unless the Court sees fit to dispense with either or all of them(1) a copy of the judgment on which the said decree is founded;(2) a copy of the judgment of the Court of first instance; and(3) a copy of the finding of the civil Court or the revenue Court, as the case may be, where an issue was remitted to such Court for decision."-(14-8-1948).[Calcutta].-For rule 1, substitute the following:"1. The rules of Order 41 shall apply, so far as may be, to appeals from appellate decree: Provided that every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and



also (unless the Court sees fit to dispense with any or all of them), by copies of the judgment on which the said decree is founded and of the judgment and decree of the Court of first instance." [Gauhati].-Same as that of Calcutta. [Kerala].-In Order 42, rule 1, after the words "The rules of Order 41" insert the words "as modified by Order 41-A".-(20-1-1970). [Karnataka].-For Order 42, substitute the following:"1. The rules contained in Order XLI and Order XLI-A shall apply, so far as may be, to appeal to the High Court of Mysore from appellate decrees with the modifications contained in this Order.2. The memorandum of appeal shall be accompanied by one certified copy each of the decree and judgment of the Court of the first instance and one certified copy each of the decree and judgment of the appellate Court.3. If any ground of appeal is based upon the construction of a document, a copy of such document shall be presented with the memorandum of appeal, and if such document is not in the language of the Court a translation thereof or of a material portion thereof certified to be a true translation by the appellant's advocate shall be presented."-(5-11-1959). [Rajasthan].-Order 42, rule 1 substituted as follows:"1. Procedure.-The rules of Order 41 shall apply, so far as may be, to appeals from appellate decrees, subject to the following proviso Every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and unless the Court sees fit to dispense with any or all of them (1) a copy of the judgment on which the said decree is founded; (2) a copy of the judgment of the Court of first instance; and (3) a copy of the finding of the civil or the revenue Court, as the case may be, where an issue is remitted to such Court for decision."

## **2. Power of Court to direct that the appeal be heard on the question formulated by it. -**

At the time of making an order under rule 11 or Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100 and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1976).]

High Court Amendments-[Andhra Pradesh].-(i) Same as that of Madras except for sub-rule (1) of rule 2 (see infra). (ii) For sub-rule (1) of rule 2, substitute the following: "(1) The memorandum of appeal shall be printed or typewritten and shall be accompanied by the following papers: .One certified copy of the decree of Court of first instance and of the appellate Court and four neatly typewritten or in any other way mechanically reproduced copies of each of the judgment of the said Courts, one copy of each judgment being a certified copy. The judgment shall be neatly typewritten or mechanically reproduced in any other way on both sides of white fulscap folio paper with double spacing and with two inches wide outer margin and about one inch wide inner margin, each page containing not more than thirty-two lines. 4'-(10-2-1977). [Delhi].-Same as that of Punjab-(31-10-1966). [Himachal Pradesh].-Same as that of Punjab-(25-1-1971). (Kerala).-In Order 42, after rule 1, the following rule shall be inserted: "2. (1) Memo. to be typed or printed. What to accompany memorandum.-The memorandum of appeal shall be printed or typewritten and shall be accompanied by a certified copy of the decree and judgment of the appellate Court of first instance. (2) Copies of documents to be construed.-If any ground of appeal is based upon the

construction of a document, a true copy of such document shall be presented with the memorandum of appeal."-(9-6-1959).[Punjab].-Add the following as rule 2:"2. In addition to the copies specified in Order 41, rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the appellate Court dispenses therewith."-(19-3-1926).

### **3. Application of rule 14 of Order XLI. -**

Reference in sub-rule (4) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.]

High Court Amendments-[Karnataka].-Omit Order 42 and substitute the following therefor:"ORDER XLII1. The rules contained in Order 41 and Order 41-A shall apply, so far as may be, to appeals to the High Court of Mysore from appellate decree with the modifications contained in this Order.2. The memorandum of appeal shall be accompanied by one certified copy each of the decree and judgment of the Court of the first instance and one certified copy each of the decree and judgment of the appellate Court.3. If any ground of appeal is based upon the construction of a document a copy of such document shall be presented with the memorandum of appeal, and if such document is not in the language of the Court a translation thereof or of a material portion thereof certified to be a true translation by the appellant's Advocate shall be presented."-(5-11-1959).[Madras].-Substitute the following for the existing Order XLII:-"**ORDER XLII Appeals from Appellate Decrees**1. The rules of Order 41 and Order 41-A shall apply, so far as may be, to appeals to the High Court of judicature at Madras from appellate decrees with the modifications contained in this Order.2. (1) The memorandum of appeal shall be printed or typewritten and shall be accompanied by the following papers:One certified copy of the decree of Court of first instance and of the appellate Court and four printed copies of each of the judgments of the said Courts, one copy of each judgment being a certified copy.(2) If any ground of appeal is based upon the construction of a document, a printed or typewritten copy of such document shall be presented with the memorandum of appeal: Provided that if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader, to be a correct translation shall be presented.(3) If the appellant fails to comply with this rule, the appeal may be dismissed."Order XLII-AHigh Court Amendment-[Kerala].-After Order 42; the following Order shall be added, namely:"Order XLII-AAppeals from decrees and orders of Single Judge to Division Bench of the High CourtProcedure.-The rules of Orders 41 and 41-A shall apply, so far as may be, to appeals from decrees and orders of a Single Judge to a Division Bench."-(9-6-1959).

## **Order – XLIII**

### **APPEALS FROM ORDERS**

## 1. Appeal from orders. -

An appeal shall lie from the following orders under the provisions of section 104, namely:-(a)an order under rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in rule 10A of Order VII has been followed] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).];(b)[\*\*\*\*\*] [Clauses (b) omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](c)an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;(d)an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte [\*\*\*\*\*] [Clauses (b), (c), (g) (h) (m) (o)and (v) omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](f)an order under rule 21 of Order XI;(g)[\*\*\*\*\*] [Clauses (b), (c), (g) (h) (m) (o)and (v) omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](i)an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;(j)an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;(ja)[ an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1976).](k)an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;(l)an order under rule 10 of Order XXII giving or refusing to give leave;(m)[\*\*\*\*\*] [Clauses (m), (o) and (v) omitted by Section 89, ibid. (w.e.f. 1.2.1977).](n)an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;(na)[ an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent persons:] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](o)[\*\*\*\*\*] [Clauses (b), (c), (g) (h) (m) (o)and (v) omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](p)orders in interpleader-suits under rule, rule 4 or rule 6 of Order XXXV;(q)an order under rule 2, rule 3 or rule 6 of Order XXXVIII;(r)an order under rule 1, rule 2 [rule 2A] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).], rule 4 or rule 10 of Order XXXIX;(s)an order under rule 1 or rule 4 of Order XL;(t)an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;(u)an order rule 23 [or rule 23A] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;(v)[\*\*\*\*\*] [Clauses (b), (c), (g) (h) (m) (o)and (v) omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).](w)an order under rule 4 of Order XLVII granting an application for review.

High Court Amendments-[Allahabad].-In Order 43, rule 1:-(i) Delete clauses (g), (i) and (o).-(1-6-1957).(ii) Add in clause (r), the words "Rule 2-A" between the words "Rule 2" and "Rule 4".-(19-4-1958).[Andhra Pradesh].-(i) Same as those of Madras item (b), (c) and (d).(ii) Insert the following as rule 1, clause (jjj):"(jjj) an order under rule 106 of Order XXI".-(19-4-1956).(iii) Substitute the following as rule 1, clause (r):"(r) an order under rule 1, rule 2, rule 3-A, rule 3-B, rule 4 or rule 10 of Order XXXIX".-(12-7-1962).[Bombay].-In rule 1, for the existing clause (r), substitute the following as:"(r) an order under rule 1, rule 2, rule 4, rule 10 or rule 11 of Order

XXXIX."-(1-10-1983).[Calcutta].-Insert the following after clause (i), rule 1, Order 43:"(ii) an order under rule 57 of Order 21, directing that an attachment shall cease or directing or omitting to direct that an attachment shall continue."[Delhi].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Kerala].-Clauses (jj), (nn) and (s)-Same as those of Madras.-(9-6-1959).[Madras].-(a) Add the following after rule 1(i):"(ii) An order under rule 106 of Order XXI."(b) Add the following after rule 1 (j):"(jj) An order rejecting an application made under sub-rule (1) of rule 105 of Order 21 provided an order on the main application referred to in sub-rule (1) of rule 104 of that Order is appealable."(c) Add the following after rule 1(n):"(nn) An order under rule 5 or rule 7 of Order 33 rejecting an application for permission to sue as a pauper on the ground specified in clause (d) or clause (d-i) of rule 5 aforesaid."(d) Substitute the following for clause (s) of rule 1:"(s) An order under rule 1 or rule 4 of Order 40, except an order under the proviso to sub-rule (2) of rule 4."[Patna].-Add the following after clause (i), rule 1, Order 43:"(ii) an order in garnishee proceedings other than order referred to in rule 63-H (1) of Order 21."-(7-1-1936).[Punjab].-In clause (u), after the word and figures "rule 23", insert the words and figures "or rule 23-A".-(3-8-1928).

[1A . Right to challenge non-appealable orders in appeal against decree. [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f 1.2.1976).]- (1) Where any order is made under this Code against a party and there upon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.(2)In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.]

## 2. Procedure. -

The rules of Order XLI shall apply, so far as may be, to appeals from orders.

High Court Amendments-[Allahabad].-In Order 43, rule 2, between the words "the rules of Order 41" and "shall apply" insert the words "and Order 41-A".-(22-12-1951).[Andhra Pradesh].-Rules 2 and 3-Same as those of Madras.[Karnataka].-(i) Omit rule 2.(ii) Add the following rules:"2. The rules contained in Orders 41 and 41-A shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any subordinate Court from which an appeal to the High Court is allowed under the provisions of any law:Provided that in the case of appeals against interlocutory orders made prior to decree or final order, the Court which passed the order appealed from need not send the records of the case unless an order has been made by the High Court for stay of further proceedings in that Court but send only such records as may be called by the High Court.3. Rules contained in Order 42 shall apply, so far as may be, to appeals from appellate orders."-(5-11-1959).[Kerala].-In Order 43 for rule 2 the following rule shall be substituted, namely:"2. Rules in Order 41, Order 41-A and Order 42, rule 2(2) to apply.-The rules of Order 41, Order 41-A and Order 42, rule 2(2) shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any civil Court from which an appeal to the High Court is allowed under any provisions of law.When records to be sent up by lower Court.-Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the

order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court."-(9-6-1959 and 15-10-1968).[Madras].-(1) In Order 43, substitute the following for rule 2:"2. The rules of Order 41 and Order 41-A shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any civil Court from which an appeal to the High Court is allowed under any provision of law:Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court."(2) Add the following as rule 3 of Order 43:"3.(1) The provisions of Order 42 shall apply, so far as may be, to appeals from appellate orders.(2) A memorandum of appeal from an appellate order shall be accompanied by a certified copy of the judgment and of the decree or order of the Court of first instance, and by a certified copy of the judgment and of the order of the appellate Court.(3) If any ground of appeal is based upon the construction of a document, a printed or typewritten copy of such document shall be presented with the memorandum of appeal:Provided that, if such document is not in the English language and the appellant appears by a Pleader, an English translation of the document certified by the Pleader to be a correct translation shall be presented."[Punjab, Haryana and Chandigarh].-In Order 43, for rule 2, substitute as follows:-"The rules of Order 41 shall apply, so far as may be, to appeals from orders:Provided that in the case of appeals against interlocutory orders, the Court which passed the order appealed from shall not send the records of the case unless summoned by the appellate Court."-(Punjab 28-1-1983; Haryana 25-1-1983 and Chandigarh 1-4-1983).

## Order – XLIV

**Appeals by indigent Persons**[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for " PAUPER APPEALS" (w.e.f. 1.2.1977)]

### 1. Who may appeal [as an indigent person] [Substituted by Act 104 of 1976 " as pauper" (w.e.f. 1.2.1976)]. -

(1)Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an [indigent person] [Substituted by Act 104 of 1976 " pauper" and " paupers" respectively (w.e.f. 1.2.1976)], subject, in all matters, including the presentation of such application, to the provisions relating to suits by [indigent person] [Substituted by Act 104 of 1976 " pauper" and " pauper" respectively (w.e.f. 1.2.1977)], in so far as those provisions are applicable.[\* \* \*] [Sub-rule (2) Omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977)]

High Court Amendments-[Andhra Pradesh].-Add the following proviso to sub-rule (1) of rule 1:"Provided that in case where the appeal is presented to the High Court, the application for permission to appeal as pauper may be presented by the applicant in person or by his or her authorised agent or by an Advocate."-(30-4-1970).Order 44, Rule 1-A[Rajasthan].-The following shall be added as rule 1-A in Order 44:"1-A. Where an application is rejected under rule 1, the Court may while rejecting the application allow the applicant to pay the requisite Court-fee within a time

to be fixed by it; and upon such payment the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance."-(21-7-1954).

## **2. [Grant of time for payment of court-fee. -**

Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee has been paid in the first instance.][Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for rule 2 (w.e.f. 1.2.1977)]

## **3. Inquiry as to whether applicant is an indigent person. -**

(1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of the Court. (2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.]

High Court Amendment-[Allahabad].-In Order 44, for rule 3, substitute the following: "3. Inquiry as to whether applicant is an indigent person.-The inquiry into the question whether or not the applicant referred to in rule 1 is an indigent person shall be made by the Appellate Court or under the orders of the Appellate Court by an officer of that Court unless the Appellate Court considers it necessary, in the circumstances of the case, that inquiry should be held by the Court from whose decision the appeal is preferred: Provided that if such applicant was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further enquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from, but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an enquiry into the question aforesaid shall be made in the manner stated above."-(26-4-1987).

## Order – XLV

Appeals to the Supreme Court\*\*

### 1. "Decree" defined. -

In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

### 2. Application to Court whose complained of. -

(1)Whoever desires to appeal the Supreme Court shall apply by petition to the Court whose decree is complained of.[Rule 2 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976 (w.e.f. 1-2-1977).](2)[ Every petition under sub-rule (1) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (1).] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]

Uttar Pradesh.- In its application to the State of Uttar Pradesh, in rule 2 after sub-rule (2) the following subrule be inserted, namely:-"(3) Notwithstanding anything contained in sub-rule (1), whoever desires to appeal to the Supreme Court, may apply orally to the Court whose decree is to be complained of, immediately before or after the pronouncement of the judgment by the Court, for a certificate contemplated in sub-rule (1) of rule 3, and the Court may either grant or refuse the certificate, or direct the applicant to file petition as required by sub-rule (1):Provided that if an oral application is entertained and rejected, no written petition under sub-rule (1) shall lie."-[U.P. Act 57 of 1976].High Court Amendments-[Andhra Pradesh].-For rules 2 and 3, substitute the following:"2. Application to Court whose decree or judgment complained of.-Whoever desires to appeal to the Supreme Court under clause (1) of Art. 133 of the Constitution shall apply for a certificate by petition to the Court whose decree or judgment is complained of:Provided that an application may be made orally for the purpose, immediately after the judgment has been delivered:Provided further where the certificate has been refused on an oral application no subsequent petition for the certificate shall lie.3. Contents of the petition.-Every such petition shall state the grounds of appeal and pray for a certificate to appeal to the Supreme Court under clause (1) of Article 133 of the Constitution."-(10-2-1977).[Bombay].-In Order 45, after sub-rule (2) of rule 2, insert the following as sub-rule (3):-"3. Application to Court whose decree is complained of.-(1) Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of.(2) Notwithstanding anything contained in sub-rule (1) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the judgment by the Court, and the Court may grant or refuse leave to the party to appeal to the Supreme Court or direct the party to file a petition as required by sub-rule (1):Provided, however, that if an oral application for leave under sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie."-(1-10-1983).[Madras].-For sub-rule (1), substitute the following:"(1) Whoever desires to appeal to Supreme Court may, make an oral application to 'the Court whose decree is complained of,

immediately after the pronouncement of the judgment and in such a case, it shall be heard and disposed of immediately, or may apply by petition to the Court, whose decree is complained of."-(17-11-1988).[Patna].-For rule 2, substitute the following, namely:"2. Application to Court whose judgment, decree or final order is complained of.-(1) Whoever desires to appeal to the Supreme Court may apply by petition to the Court whose judgment, decree or final order is complained of.(2) Notwithstanding anything contained in sub-rule (1) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the judgment of final order by the Court and the Court may grant or refuse leave to the party to appeal to the Supreme Court or direct the party to file a petition as required by sub-rule (1):Provided that if an oral application for leave under the sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie."-(11-1-1978).[Punjab, Haryana and Chandigarh].-Omit sub-rule (2).-(1-1-1974).

### **3. Certificate as to value or fitness. -**

(1)[Every petition shall state the grounds of appeal and pray for a certificate-(i)that the case involves a substantial question of law of general importance, and(ii)that in the opinion of the Court the said question needs to be decided by the Supreme Court.](2)Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.[ Substituted by Act No. 49 of 1973 for sub.rule (1).]

High Court Amendments-[Allahabad].-After the word "granted" and before the full stop at the end of sub-rule (2) of rule 3, insert the words "unless it thinks fit to refuse the certificat,".-(9-1-1960).[Andhra Pradesh]-See under rule 2.[Bombay].-In rule 3 for the existing sub-rule (2), substitute the following as sub-rule (2):"(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted, unless it thinks fit to refuse the certificate."-(1-10-1983).[Gujarat].-In rule 3(2) after the words "to show cause why the said certificate should not be granted", the following words shall be inserted, namely:"unless it thinks fit to refuse the certificate".-(17-8-1961).[Kerala].-In Order 45 in rule 3:(i) for sub-rule (2), the following sub-rule shall be substituted, namely:"(2) Upon receipt of such petition, the Court after fixing a day for hearing the applicant or his pleader and hearing him, if he appears, may dismiss the petition."(ii) after sub-rule (2), the following sub-rule shall be inserted, namely:"(3) Unless the Court dismisses such petition under sub-rule (2), it shall direct notice to be served on the opposite party to show cause why, the said certificate should not be granted."-(9-6-1959).[Madhya Pradesh].-(1) For sub-rule (2) of rule 3, Order 45, the following sub-rules shall be substituted, namely:"(2) Upon receipt of such petition, the Court, after sending for the record, and after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, may dismiss the petition.(3) Unless the Court dismisses the petition under sub-rule (2), it shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted. "-(16-9-1960).[Madras].-The following proviso shall be added to sub-rule (2) of rule 3:"Provided that where leave to appeal is sought from a decree dismissing a proceeding in limine, notice shall not be necessary unless the Court otherwise directs."-(16-7-1969).[Orissa].-For sub-rule (2) of rule 3, Order 45, the following sub-rule shall be substituted, namely:"(2) Upon receipt of such petition, the Court may, after giving the applicant or his pleader an opportunity of being heard, dismiss the petition summarily and the Court, unless dismisses the petition summarily, shall direct notice to be served on the opposite party to show



cause why the said certificate should not be granted: Provided that where a party has appeared through a pleader in the High Court, service of notice on such pleader either in the manner provided in this Code or by sending a copy of such notice by registered post shall be deemed to be sufficient notice to the party."-(14-5-1984).[Punjab].-For sub-rule (2) of rule 3 substitute the following: "(2) Upon receipt of such petition, the Court shall, unless it dismisses the petition at the preliminary hearing, direct notice to be served on the opposite party to show cause why the said certificate should not be granted."-(1-1-1974).

#### **4. [Consolidation of suits.]**

Rep. by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973) Section 4 (w.e.f. 1-2-1977).

#### **5. [Remission of dispute to Court of first instance.]**

Rep. by Section 4, *ibid*, (w.e.f. 1-2-1977).

#### **6. Effect of refusal of certificate. -**

Where such certificate is refused, the petition shall be dismissed.

#### **7. Security and deposit required on grant of certificate. -**

(1) Where the certificate is granted, the applicant shall, within [ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow] [Substituted by Act 26 of 1920, Section 3, for " six months " .] from the date of the decree complained of, or within six weeks from the date of the grant of the certificate whichever is the later date, -(a) furnish security [in cash or in Government securities] [Inserted by Act 26 of 1920, Section 3.] for the costs of the respondent, and (b) deposit the amount required to defray the expense of translating, transcribing indexing [printing,] [Inserted by A.O. 1950.] and transmitting to [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty-in-Council."] a correct copy of the whole record of the suit, except-(1) formal documents directed to be excluded by any [Rule of the Supreme Court] [Substituted by A.O. 1950 for " order of His Majesty-in-Council".] in force for the time being; (2) papers which the parties agree to exclude; (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and (4) such other documents as the High Court may direct to be excluded: Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished: Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.] [Added by Act 26 of 1920, Section 3.]

High Court Amendments-[Allahabad].-(i) In rule 7(1)(a) between the words "the respondent" and the word "and" insert the following words: "except when the Government is the applicant".-(20-6-1936).(ii) In the first proviso to rule 7(1) for the words 'at the time of granting the certificate' substitute the words 'at any time before expiry of the period for furnishing

security'.-(4-2-1939).[Andhra Pradesh].-Rule 7 deleted-(4-8-1975).[Kerala].-In rule 7 after sub-rule (1), the following sub-rule shall be inserted, namely:-(2). No such security as is mentioned in rule 7 (1), clause (a) shall be required from the Government or, where State Government has undertaken the defence of the suit, from any public officer and in respect of an act purporting to be done by him in his official capacity."-(9-6-1959).[Punjab, Haryana and Chandigarh].-Substitute the following for rule 7:"7. Deposit required on grant of certificate.-(1) Where the certificate is granted, the applicant shall within ninety days of the order of the Supreme Court under rule 14(1) of the Supreme Court Rules for the time being in force or such further period not exceeding sixty days as the Court may upon cause shown allow from the date of the Supreme Court order under rule 14(1), whichever is later:(a) deposit the amount required to defray the expenses of translating, transcribing, indexing, printing and transmitting to the Supreme Court three copies of the whole record of the suit except(1) formal documents directed to be excluded by any rule of the Supreme Court in force for the time being;(2) papers which the parties agree to exclude;(3) accounts or portions of the accounts which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and(4) such other documents as the High Court may direct to be excluded".(1-1-1974).Order 45, Rule 7-A High Court Amendments-[Bombay].-In Order XLV, after the existing rule 7, insert the following rule with marginal note as new rule 7-A and its marginal note:"7-A. Security not to be demanded from Union or State Government or Government servant defended by Government.-No such security as is mentioned in clause (a) of sub-rule (1) of rule 7 above shall be required from the Union of India or a State Government or where Government has undertaken the defence of the suit from any public officer sued in respect of an act alleged to have been done by him in his official capacity."-(1-10-1983).[Gujarat].-Rule 7-A be inserted after rule 7:"7-A. No such security as is mentioned in rule 7 (1), clause (a), shall be required from the Union of India, or, where the State Government has undertaken the defence of the suit from any public Officer sued in respect of an act alleged to have been done by him in his official capacity."-(17-8-1961).[Madhya Pradesh].-Same as that of Gujarat-(16-9-1960).

## **8. Admission of appeal and procedure thereon. -**

Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall-(a)declare the appeal admitted,(b)give notice thereof to the respondent,(c)transmit to [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty-in-Council"] under the seal of the Court a correct copy of the said record, except as aforesaid, and(d)give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore and paying the reasonable expenses incurred in preparing them.

High Court Amendments-[Andhra Pradesh].-In Order 45, for existing rule 8, substitute the following, namely:-(8) On receipt from the Supreme Court of the copy of the petition of appeal, the Registrar of the Court shall(i) cause notice of the lodgment of the petition of appeal to be served on the respondent personally or in such manner as provided for service of its own processes or as the Court may prescribe or order;(ii) unless otherwise ordered by the Supreme Court, transmit to the Supreme Court at the expense of the appellant the original record of the case; and(iii) as soon as notice as aforementioned is served, to send a certificate as to the date or dates on which the said notice was served."-(21-8-1975).[Madras].-In Order 45, rule 8,(1) for clause (b), the following clause

shall be substituted, namely: "(b) give notice to such of the respondents as have entered appearance at the hearing of the appeal in the High Court and such of the respondents who have entered appearance in pursuance of notice issued under rule 3 (2), supra", and (2) in clause (c), the following shall be added at the end, namely: "give notice of such transmission to the respondents specified in rule 8 (b) above, and" - (10-1-1959). [Punjab, Haryana and Chandigarh]. - Substitute the following for rule 8: "8. Power to order further payment. - Where at any time after the admission of an appeal but before the transmission of the copy of the record, to the Supreme Court, further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid, the Court may order the appellant to make, within a time to be specified by the Court, the required payment." - (1-1-1974).

## **9. Revocation of acceptance of security. -**

At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

High Court Amendments - [Andhra Pradesh]. - Rule 9 deleted. - (21-8-1975). [Punjab, Haryana and Chandigarh]. - Substitute the following for rule 9: "9. Effect of failure to comply with order. - Where the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in this behalf of the Supreme Court, and in the meantime execution of the decree appealed from shall not be stayed." - (1-1-1974).

## **9A. [Power to dispense with notices in case of deceased parties. -**

Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court: Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the court-house of the Judge of the district in which the suit was originally brought, and by publication in such newspapers as the Court may direct. [Inserted by Act 26 of 1920, Section 4.]

High Court Amendments - [Kerala]. - In the proviso to rule 9-A for the figure (2), after the words "sub-rule" the figure "(3)" shall be substituted. - (9-6-1959). [Punjab, Haryana and Chandigarh]. - Substitute the following for rule 9-A: "9-A. Power to dispense with notice in case of deceased. - Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court: Provided that notice under sub-rule (2) of rule 3 shall be given by affixing the same in some conspicuous place in the Court house of the judge of the district in which the suit was originally brought and by publication in such newspapers as the Court may direct." - (1-1-1974).

## **10. Power to order further security or payment. -**

Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the Supreme Court such security appears inadequate, or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid, the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within except as aforesaid.

High Court Amendments-[Andhra Pradesh].-Rule 10 deleted.-(21-8-1975).[Punjab, Haryana and Chandigarh].-Substitute the following for rule 10:"10. Refund of balance deposit.-When the copy of the record, except as aforesaid, has been transmitted to the Supreme Court, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under rule 7."-(1-1-1974).

## **11. Effect of failure to comply with order. -**

Where the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in this behalf of [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty-in-Council"] and in the meantime execution of the decree appealed from shall not be stayed.

High Court Amendments-[Andhra Pradesh].-Rule 11 deleted.-(21-8-1975).[Punjab, Haryana and Chandigarh].-Substitute the following for rule 11:"11. Powers of Court pending appeal.-(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court:(a) impound any movable property in dispute or any part thereof; or(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of the decree appealed from or of any decree or order which the Supreme Court may make on the appeal, or(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise."-(1-1-1974).

## **12. Refund of balance deposit. -**

When the copy of the record, except as aforesaid, has been transmitted to the Supreme Court, the appellant may obtain a refund of the balance (if any) of the amount which he had deposited under rule 7.

High Court Amendments-[Andhra Pradesh].-Rule 12 deleted.-(21-8-1975).[Punjab, Haryana and Chandigarh].-Substitute the following for rule 12:"12. Procedure to enforce orders of the Supreme Court.-(1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall

apply by petition accompanied by a. certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred.(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct, and shall upon the application of either party give such directions as may be required for the execution of the same, and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of the original decrees.(3) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case where such opposite party or respondent did not appear either at hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place."-(1-1-1974).

### **13. Powers of Court pending appeal. -**

(1)Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.(2)The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the court,-(a)impound any movable property in dispute or any part thereof, or(b)allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty-in-Council".] may make on the appeal, or(c)stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or [of any decree or order] [Substituted by A.O. 1950, for " any order " .] which [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty-in-Council".] may make on the appeal, or(d)place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

High Court Amendment-[Punjab, Haryana and Chandigarh]-Substitute the following for rule 13:"13. Appeal from order relating to execution.-The orders made by the Court which executes the decree or order of the Supreme Court relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees."-(1-1-1974).

### **14. Increase of security found inadequate. -**

(1)Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.(2)In default of such further security being furnished as required by the Court,-(a)if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree, appealed from as if the appellant had furnished no such security;(b)if the original security was furnished by the respondent, the Court shall, so far as may be practicable stay the further execution of the decree, and restore the parties to the position in which

they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subjectmatter of the appeal as it thinks fit.

High Court Amendment-[Andhra Pradesh].-Rule 14 deleted.-(21-8-1975).

## **15. Procedure to enforce orders of the Supreme Court. -**

(1)Whoever desires to obtain execution of [any decree or order] [ Substituted by A.O. 1950, for " any order" .] of [the Supreme Court] [ Substituted by A.O. 1950, for " His Majesty-in-Council" .] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to [the Supreme Courts] [Substituted by A.O. 1950, for " His Majesty-in-Council" .], was preferred.(2)Such Court shall transmit the [decree or order] [ Substituted by A.O. 1950, for " order" .] of [the Supreme Court] [Substituted by A.O. 1950, for " His Majesty-in-Council" .] to the Court which passed the first decree appealed from, or to such other Court as [the Supreme Court] [ Substituted by A.O. 1950, for " His Majesty-in-Council" .] by such [decree or order] [ Substituted by A.O. 1950, for " order" .] may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said [decree or order] [ Substituted by A.O. 1950, for " order" .] is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.(3)[\*\*\*] [ Sub-rule (3) omitted by A.O. 1950.](4)[ ] [Inserted by Act 26 of 1920, Section 5.][Unless the Supreme Court otherwise directs, no decree or order of that Court] [ Substituted by A.O. 1950, for certain words.][shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.] [Inserted by Act 26 of 1920, Section 5.]

High Court Amendments-[Allahabad].-For rule 15 (1), substitute the following rule:"(1) Whoever desires to obtain(a) execution of any decree or order of the Supreme Court, or(b) where an appeal has been dismissed by the Supreme Court for want of prosecution, an order of the Court from which the appeal to the Supreme Court was preferred, terminating proceedings and determining the costs, shall apply to the said Court by a petition, accompanied by a certified copy of the decree passed or order made by the Supreme Court of which execution is desired, or to which effect is to be given and a memorandum of all costs incurred in India that are claimed in pursuance thereof."-(7-4-1928).[Andhra Pradesh].-(a) Substitute the following for sub-rule (1) of rule 15 of Order XLV:"15.(1) Whoever desires to obtain execution of any appellate decree or order of the Supreme Court shall apply by petition accompanied by a certified copy of the said decree or order, to the Court of first instance.Explanation.-The Court of first instance in this rule shall mean the Court in which the suit or proceeding was first instituted and where such Court has ceased to exist or to have jurisdiction to execute it, the Court which if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree would have jurisdiction to try such suit."(b) Delete sub-rules (2) and (3); and(c) Re-number sub-rule (4) as sub-rule (2).-(9-8-1957).[Bombay].-In Order XLV, for the existing rule 15 and its marginal note, substitute the following as rule 15 and its marginal note:"15. Procedure to enforce order of the

Supreme Court.-(1) (a) Any decree passed or order made by the Supreme Court in exercise of the appellate jurisdiction including any order as to the costs of, and incidental to, any proceedings in that Court shall be enforceable in accordance with the provisions of law for the time being in force relating to the enforcement of the decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred.(b) The costs incurred in the High Court as incidental to the Supreme Court Appeal including the costs in the application for leave to appeal to the Supreme Court shall be recoverable, where awarded, by execution of the order of the High Court in the same manner in which the decree or order of the High Court from which the appeal to the Supreme Court was preferred or sought to be preferred, would have been executed.(2) Unless the Supreme Court otherwise directs no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing of the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court but such order shall have the same force and effect as if it had been made before the death took place. "-(1-10-1983).[Karnataka].-In rule 15 delete sub-rules (1) and (2).-(R.O.C. No. 2526/1959, dated (9-2-1967).[Madras].-In Order XLV, rule 15:(i) Substitute the following in the place of the existing sub-rule (1):"15.(1) Whoever desires to obtain execution of any appellate decree or order of the Supreme Court shall apply by petition accompanied by a certified copy of the said decree or order to the Court of first instance.Explanation.-The Court of first instance in this rule shall mean the Court in which the suit or proceeding was first instituted and where such Court has ceased to exist or to have jurisdiction to execute it, the Court which if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree would have jurisdiction to try such suit."(ii) Delete sub-rules (2) and (3) and re-number the present sub-rule (4) as sub-rule (2).-(8-5-1958).

## **16. Appeal from order relating to execution. -**

The orders made by the Court which executes the [decree or order] [ Substituted by A.O. 1950, for " order" .] of [the Supreme Court] [ Substituted by A.O. 1950, for " His Majesty-in-Council" .], relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

## **17. [ ] [Inserted by A.O. 1937.][Appeals to Federal Court].-**

Rep. by the Federal Court, 1941 (21 of 1941), Section 2

High Court Amendments-[Punjab].-Order XLV has been substituted by Notification dated 21-12-73. The amendments made by Punjab High Court have been incorporated in the Central Act by 1976 Amendment Act except as stated above.Order XLV-A[Madras].-Insert the following after Order XLV:-"ORDER XLV-AAppeals to the Supreme Court1. Decree defined.-In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.2. Application to Court whose decree is complained of.-Whoever desires to appeal to the Supreme Court may make an oral application to the Court whose decree is complained of immediately after the pronouncement of the judgment and in such a case, it shall be heard and

disposed of immediately or may apply by petition to the Court whose decree is complained of.<sup>3</sup>

**Certificate as to fitness.**-(1) Every petition shall state the grounds of appeal and pray for a certificate(i) that the case involves substantial question of law of general importance; and(ii) that in the opinion of the Court, the said question needs to be decided by the Supreme Court.(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted:Provided that where leave to appeal is sought from a decree dismissing a proceeding in limine notice shall not be necessary unless the Court otherwise directs.<sup>4</sup>

**Consolidation of suits.**-For the purpose of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.<sup>5</sup>

**Remission of dispute to Court of first instance.**-In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to the Supreme Court, the Court to which a petition for a certificate is made under rule 2, may, if it thinks fit, refer such dispute for report to the Court of first instance, which last mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.<sup>6</sup>

**Effect of refusal of certificate.**-Where a certificate is refused, the petition shall be dismissed.<sup>7</sup>

**Power of Court pending appeal.**-(1) Notwithstanding the grant of leave to appeal to the Supreme Court, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.(2) The Court may, if it thinks fit on special cause shown by any party interested in the suit, or otherwise appearing to the Court.(a) impound any movable property in dispute or any party thereof, or(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on appeal, or(d) place any party seeking the assistance of the Court under such conditions or-give such other direction respecting the subject-matter of appeal, as it thinks fit by the appointment of a receiver or otherwise, till the petition for leave to appeal is disposed of or till the appeal is filed in the Supreme Court.<sup>8</sup>

**Procedure to enforce orders of the Supreme Court.**-(1) Whoever desires to obtain execution of any appellate decree or order of the Supreme Court shall apply by petition accompanied by a certified copy of the said decree or order to the Court of first instance.**Explanation.**-The Court of first instance in this rule shall mean the Court in which the suit or proceeding was first instituted and where such Court has ceased to exist or to have jurisdiction to execute it, the Court, which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try the suit.(2) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground, that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.<sup>9</sup>

**Appeal from order relating to execution.**-The orders made by the Court which executes the decree or order of the Supreme Court relating to such execution, shall be appealable in the same



manner and as the orders of such Court relating to the execution of its own decree."-(21-4-1971, 21-8-1974 and 16-11-1988).

## **Order – XLVI**

### **REFERENCE**

#### **1. Reference of question to High Court. -**

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

#### **2. Court may pass decree contingent upon decision of High Court. -**

The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred; But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

#### **3. Judgment of High Court to be transmitted and case disposed of accordingly. -**

The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

#### **4. Costs of reference to High Court. -**

The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

#### **4A. [Reference to high Court under proviso to section 113. -**

The provisions of rules 2, 3 and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1.][ Inserted by Act 24 of 1951, Section 2.]

## **5. Power to alter, etc., decree of Court making reference. -**

Where a case is referred to the High Court under rule 1 or under the proviso to section 113, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

## **6. Power to refer to High Court questions as to jurisdiction in small causes. -**

(1)Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.(2)On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

High Court Amendment-[Kerala].-In sub-rule (1), for the words "of small causes", the words "exercising small cause jurisdiction" shall be substituted.-(9-6-1959).

## **7. Power to District Court to submit for revision proceeding had under mistake as to jurisdiction in small causes. -**

(1)Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.(2)On receiving the record and statement the High Court may make such order in the case as it thinks fit.(3)With respect to any proceeding subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.(4)A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

High Court Amendment-[Kerala].-Rule 7 shall be deleted.-(9-6-1959).Order 46, Rule 8High Court Amendments-[Allahabad].-Add after rule 7 of Order XLVI:"8. Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order."-(1-6-1918).[Bombay].-In Order XLVI, after the existing rule 7, add the following rule with marginal note as new rule 8 and its marginal note:"8. Applicability of rule 38 of Order XLI.-Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order."-(1-10-1983).[Gujarat].-Same as that of Allahabad.-(17-8-1961).

## Order – XLVII

### REVIEW

#### 1. Application for review of judgment. -

(1) Any person considering himself aggrieved-(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order. (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. [Explanation.-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2. 1977).]

High Court Amendments-[Kerala].-In Order XLVII, rule 1, in clause (c), to sub-rule (1), for the words "of small causes", the words "exercising small cause jurisdiction" shall be substituted.-(9-6-1959). [Patna].-Delete the words "or on account of non-payment, inspite of due diligence, of Court-fee within time allowed by the Court" as inserted by 1958 Amendment in para below clause (c).-(5-12-1973).

#### 2. [To whom applications for review may be made.]-

Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), Section 14.

#### 3. Form of applications for review. -

The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.

#### 4. Application where rejected. -

(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application. (2) Application where granted.-Where the Court is of opinion that the application for review should be granted, it shall grant the same: Provided that-(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in

support of the decree or order, a review of which is applied for; and (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

## **5. Application for review in Court consisting of two or more judges. -**

Where the Judge or Judges, or any one of the judges, who passed the decree or made the order a review of which is applied for, continues or continued attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

High Court Amendments-[Bombay].-In Order XLVII, for the existing rule 5 and its marginal note, substitute the following as rule 5 and its marginal note: "5. Application for review in Court consisting of two or more Judges.-Where the Judge or Judges, or any one of the Judges who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented and is not or are not precluded by absence or other cause for a period of two months next after application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same: Provided that if in the case of decree or order passed by a Division Bench of two or more Judges of the High Court sitting at any place in the State of Maharashtra, all the said Judges are not available for sitting together at one place when the review application is ready for hearing, the application may be heard by a Division Bench of two or more Judges, at least one of whom, if available, should be the Judge who had passed the decree or order, a review of which applied for."-(1-10-1983).[Gujarat].-For the words "six", the word "two" shall be substituted.-(17-8-1961).

## **6. Application where rejected. -**

(1) Where the application for a review is heard by more than one judge and the Court is equally divided, the application shall be rejected. (2) Where there is a majority, the decision shall be according to the opinion of the majority.

## **7. Order of rejection not appealable. Objections to order granting application. -**

(1) [An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 for sub. rule (1) w.e.f. 1.2.1977]. (2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the

satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.(3)No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

## **8. Registry of application granted, and order for re-hearing. -**

When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

## **9. Bar of certain application. -**

No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Order 47, Rule 10High Court Amendments-[Allahabad].-Add the following rule at the end of Order 47:"10. Rule 38 of Order 41 shall apply, so far as maybe, to proceedings under this Order."[Bombay].-In Order XLVII, after the existing rule 9, add the following rule with marginal note as new rule 10 and its marginal note:"10. Applicability of rule 38 of Order XLI.-Rule 38 of Order XLI shall apply, so far as may be, to proceeding under this Order."-(1-10-1983).[Gujarat].-Same as that of Allahabad.-(17-8-1961).ORDER XLVII-A[Bombay].-After the existing Order XLVII, add the following Order with heading as new Order XLVII-A and its heading:"ORDER XLVII-AREVISION1. Applicability of rule 38 of Order XLI.-Rule 38 of Order XLI shall apply, so far as may be,to proceedings under section 115 of this Code."-(1-10-1983).

## **Order – XLVIII**

### **MISCELLANEOUS**

## **1. Process to be served at expense of party issuing. -**

(1)Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.(2)Costs of service.-The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

High Court Amendments-[Allahabad].-Add the words "Except as provided in Order 4, rule 1(2)" at the beginning of clause (1) of rule 1.-(24-7-1926).[Bombay].-In Order 48, rule 1, for the existing sub-rule (2) and its marginal note, substitute the following as sub-rule (2) and its marginal note:"(2) Costs of service.-The Court-fee chargeable for service of the process of the Court shall, except as provided for in sub-rule (2) of rule 1 of Order IV, be paid when the process is applied for, or within such time as may be fixed by the Court."-(1-10-1983).[Calcutta].-Substitute for sub-rule (2):"(2) The Court-fee chargeable for such service shall be paid when the process is applied for, or

within such time, if any, as the Court may, when ordering its issue, fix for the purpose."[Gauhati].-Same as that of Calcutta.[Madhya Pradesh].-Substitute the following for the words "The Court-fee" occurring in sub-rule (2):"Except as provided in Order 4, rule 1(2), the Court-fee"!--(16-9-1960).

## **2. Orders and notices how served. -**

All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

## **3. Use of forms in appendices.. -**

The forms given in the appendices, with such variation as the circumstances or each case may require, shall be used for the purpose therein mentioned.

High Court Amendments-[Calcutta].-Insert the following words after the word "appendices": "or such other forms as may be prescribed by the High Court of judicature at Fort William in Bengal."[Gauhati].-Same as that of Calcutta.[Punjab, Haryana and Chandigarh].-After rule 3, add the following:"4. The provisions of rules 11(2), 17, 18, 19 and 21 of Order XLI of the Code of Civil Procedure, 1908, shall apply mutatis mutandis to civil revision petitions."-(16-10-1970).

# **Order – XLIX**

## **CHARTERED HIGH COURTS**

### **1. Who may serve processes of High Court. -**

Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

### **2. Saving in respect of Chartered High Courts. -**

Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

### **3. Application of rules. -**

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-(1)rule 10 and rule 11, clauses (b) and (c), of Order VII;(2)rule 3 of order X;(3)rule 2 of Order XVI;(4)rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as

relates to the manner of taking evidence) of Order XVIII;(5)rules 1 to 8 of Order XX; and(6)rule 7 of Order XXXIII (so far as relates to the making of a memorandum); and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

High Court Amendments-[Bombay].-In Order 49, for the existing rule 3 and its marginal note, substitute the following as rule 3 and marginal note:"3. Application of rules.-The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary civil jurisdiction, namely:(1) rule 19-A of Order V,(2) rule 10, clauses (b) and (c) of rule 11 and rule 14-A of Order VI,(3) rule 14-A of Order VI,(4) rule 3 of Order X,(5) rule 2 of Order XVI,(6) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII,(7) rules 1 to 8 (both inclusive) of Order XX,(8) rule 72-A of Order XXI,(9) rule 7 of Order XXXIII (so far as relates to the making of a memorandum), and(10) rule 38 of Order XLI;and rules 31 and 35(4) of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction."-(1-10-1983).[Calcutta].-In rule 3 delete the word "rule" before the figure "35" and insert the words "rules 12,14,15 and" before the figure "35".

Order 49, Rule 4High Court Amendments-[Bombay].-In Order 49, after rule 3, as substituted above, add, the following rule with marginal note as new rule 4 and its marginal note:"4. Powers of the Registrar of the High Court to accept Court fees after the presentation of the appeal.-Where on a memorandum of appeal presented to the High Court within the time prescribed for the same the whole or any part of the fee prescribed by the law for the time being in force relating to Court-fees has not been paid, the Registrar may, in his discretion, allow the appellant to pay the whole or part, as the case may be, of such Court-fee after the presentation of the memorandum of appeal, and may admit the appeal to the Register, even though the Court-fee or part of it may have been paid after the time prescribed for the presentation of the appeal."-(1-10-1983).[Calcutta].-Add the following as new rule 4:"4. A Judge of the High Court may pronounce the written judgment or opinion of any other Judge of the said Court signed by him when such Judge continues to be a judge of such Court but is prevented by absence or any other reason from pronouncing that judgment or opinion in open Court."

## Order – L

### PROVINCIAL SMALL CAUSE COURTS

#### 1. Provincial Small Cause Courts. -

The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) [or under the Berar Small Cause Courts Law, 1905] [ Inserted by Act 4 of 1941, Section 2 and Sch. III.] or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act or Law] [ Substituted by Act 4 of 1941, for " under that Act" .] [or to Courts in ] [Inserted by Act 2 of 1951, Section 18.][any part of India to which the said Act does not extend] [ Substituted by Adaptation of Laws (No. 2) Order, 1956, for " Part B States" .][exercising a corresponding jurisdiction] [ Inserted by Act 2 of 1951, Section 18.] that is to say-(a)so much of this Schedule as relates to-(i)suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;(ii)the execution of decrees against immovable property or the interest of a partner in partnership property;(iii)the settlement of issues; and(b)the following rules

and orders:-Order II, rule 1 (frame of suit);Order X, rule 3 (record of examination of parties);Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;Order XVIII, rules 5 to 12 (evidence);Orders XLI to XLV (appeals);Order XLVII, rules 2, 3, 5, 6, 7 (review);

Uttar Pradesh.-In its application to the State of Uttar Pradesh in rule 1, in clause (b) after the words "provides for pronouncement at once of judgment" add "and rule 5".-[U.P. Act 30 of 1974].

## Order – LI

### PRESIDENCY SMALL CAUSE COURTS

#### 1. Presidency Small Cause Courts. -

Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), this Schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

High Court Amendments-[Gujarat].-In rule 1, for the words "established in the towns of Calcutta, Madras and Bombay" substitute the words "established in the cities of Ahmedabad, Bombay, Calcutta and Madras".-(29-3-1962).[Kerala].-Order 51 shall be omitted.-(9-6-1959).Order 52, Rule 1High Court Amendments-[Allahabad].-Add the following as Order 52, rule 1:-"Rule 38 of Order 41 shall apply, so far as may be, to proceedings under section 115 of the Code."[Gujarat].-Same as that of Allahabad-(17-8-1961).[Madras].-In the First Schedule after Order LI, the following Order shall be added, namely:"ORDER LII-LODGING OF CAVEAT1. Any person, claiming a right to appear before the Court on the hearing of an application which is expected to be made or has been made in a suit, appeal, revision or any proceeding instituted or about to be instituted in a Court to which the Code applies, may lodge a Caveat in the Court. The Caveat shall be in the form prescribed in Appendix D-1. The Caveat shall be accompanied by(a) as many copies of the notice of Caveat as will be required to be served on the applicant or applicants.(b) the Court-fees prescribed for the Caveat; and(c) the fees prescribed for service of such notice of Caveat.2. Every Court shall maintain a Register hereafter called the Register of Caveats containing the following particulars, namely:(1) Serial Number.(2) Date of presentation of Caveat.(3) Date upto which the Caveat will remain in force.(4) Name and address of Caveator.(5) Address for service of the Caveator within the jurisdiction of the Court.(6) Name and address of the Pleader, if any, for the Caveator.(7) The number of the proceeding, if any, on the file of the Court in which the Caveat is filed.(8) The number of the proceeding in the lower Court against which further proceedings are taken or contemplated to be taken in the appellate or revisional Court (This will not apply to the Court of first instance.)(9) Name and address of the applicant or petitioner or the expected applicant or petitioner.(10) Date of service on the applicant or petitioner or expected applicant or petitioner by the Caveator.(11) Signature of the Caveator or his Pleader, if any.3. As soon as a person lodges a Caveat as provided in rule 1 above, an entry shall be made in the Register of Caveats in the presence of the Caveator himself or his Pleader, who shall sign the register aforesaid.4. When a person makes an application for any interlocutory orders in a suit, appeal, revision or any other proceeding, he



shall look in to the Register of Caveats and make an endorsement in the application as to whether or not a Caveat has been entered with respect to his application as verified from the Register of Caveats.5. As soon as the Caveator lodges a Caveat, he shall forthwith serve notice of the Caveat by registered post acknowledgment due on the person by whom the application has been made or is expected to be made, and file proof of such service.6. Where after a Caveat has been lodged, any application is filed in a suit, appeal, revision or any other proceeding, the Court shall serve a notice of the application on the Pleader for the Caveator, is any, or on the Caveator in the manner provided for service on defendant, respondent or opposite party, of summons to appear. All provisions applicable to such summons shall apply to the service of such notice:Provided that at the time when an application comes up for hearing, the Caveator or his Pleader takes notice, it shall not be necessary for the Court to serve a notice on the Caveator.7.(a) In respect of proceedings in the Subordinate Civil Courts in the State and in the appellate jurisdiction of the High Court of Judicature at Madras, Court-fee payable on the Caveat shall be that provided for in the Tamil Nadu Court Fees and Suits Valuation Act, 1955.(b) In respect of the proceedings on the file of the Original Side of the High Court, the said fee shall be that provided for in the High Court Fees Rules.8. The fees for service of notice of the Caveat shall be those provided for in the Rules of the High Court, Madras, Original Side, 1956 or in the Rules of the High Court, Madras, Appellate Side, 1965 or in the Rules relating to service and execution of processes made under sub-section (1) of section 80 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, as the case may be.9. If the Caveat is not lodged in accordance with these Rules, it is liable to be rejected in limine.

Form of Caveat

IN THE COURT OF .....Application/Petition ..... No ..... of .....  
20....inNo .....  
of.....20.....Caveator.Vs.....  
or expected applicant or petitioner.The address of the Caveator for service of notice within the jurisdiction of this Court is.....The address of the applicant/petitioner or expected applicant/petitioner for service is.....Let nothing be done in the above matter without notice to the Caveator.The Caveator abovenamed undertakes to forthwith serve a notice of the Caveat by Registered Post with acknowledgment due on the applicant petitioner or expected applicant/petitioner and file proof of such service.Dated .....Counsel for  
CaveatCAVEATOR".-(2-7-1980).

## APPENDICES TO THE FIRST SCHEDULE

### SUBHEADING FORMS

## APPENDIX A

### Pleading

#### 1. Titles of Suits

<p><b>IN THE COURT OF</b></p> <p>against</p>	<p><b>A.B. (add description and residence).....Plaintiff</b></p>
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IN THE COURT OF

**A.B. (add description and residence).....Plaintiff**

**C.D. (add description and residence).....Defendant**

## 2. Description of parties in particular Cases

[The Union of India or the State of..... as the case may be.]\_\_\_\_\_The Advocate General of \_\_\_\_\_The Collector of \_\_\_\_\_The State of \_\_\_\_\_The A. B. Company Limited having its registered office at \_\_\_\_\_A. B., a public officer of the C. D. Company. \_\_\_\_\_A. B. (add description and residence), on behalf of himself and all other creditors of C. D. late of (add description and residence). \_\_\_\_\_A. B. (add description and residence), on behalf of himself and all other holders of debentures issued by the Company Limited. \_\_\_\_\_The Official Receiver. \_\_\_\_\_A. B. a minor (add description and residence), by C. D. [or by the Court of Wards], his next friend. \_\_\_\_\_A. B. (add description and residence), a person of unsound mind [or of weak mind] by C. D. his next friend. \_\_\_\_\_A. B. a firm carrying on business in partnership at \_\_\_\_\_A. (add description and residence), by his constituted attorney C. D. (add description and residence). \_\_\_\_\_A. B. (add description and residence), Shebait of Thakur. \_\_\_\_\_A. B. (add description and residence), executor of C. D. deceased. \_\_\_\_\_A. B. (add description and residence), heir of C. D. deceased. \_\_\_\_\_

## 3. PLAINTS

**No. 1Money Lent(Title)**A.B., the above-named plaintiff, states as follows :(1). On the ..... day of 20 .....,..... he lent the defendant rupees repayable on the .....day of .....(2). The defendant has not paid the same, except .....rupees paid on the ..... day of .....20 .....[If the plaintiff claims exemption from any law of limitation, say :](3). The plaintiff was a minor [or insane] from the ..... day of till ..... the .....day of .....(4). [Facts showing when the cause of action arose and that the Court has jurisdiction.](5). The value of the subject-matter of the suit for the purpose of jurisdiction is .....rupees and for the purpose of court-fees is .....rupees.(6). The plaintiff claims .....rupees, with interest at .....per cent. from the .....day of .....19 .....  
**No. 2Money Overpaid(Title)**A.B., the above named plaintiff, states as follows :-(1). On the ..... day of. ... 20... the plaintiff agreed to buy and the defendant agreed to sell ... bars of silver at. ... annas per tola of fine silver.(2). The plaintiff procured the said bars to be assayed by E.F., who was paid by the defendant for such assay, and E.F. declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant. . . rupees.(3). Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.(4). The defendant has not repaid the sum so overpaid.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]  
**No. 3Goods Sold at a Fixed Price and**

**Delivered**(Title)A. B., the above-named plaintiff states as follows :-(1). On the . . . . . day of. . . . .  
. . . 20. . . . ., E.F. sold and delivered to the defendant [one hundred barrels of flour, or the goods  
mentioned in the schedule hereto annexed, or sundry goods.](2). The defendant promised to pay . .  
. . . rupees for the said goods on delivery [or or the . . . . . day of . . . . ., some day before the  
plaint was filed].(3). He has not paid the same.(4). E.F. died on the . . . . . day of 20. . . . . By his last  
will he appointed his brother, the plaintiff his executor.[As in paras 4 and 5 of Form No. 1.](7). The  
plaintiff as executor of E.F. claims [Relief Claimed].**No. 4Goods Sold at a Reasonable Price  
and Delivered**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of. .  
. . . . . 20. . . . ., plaintiff sold and delivered to the defendant [sundry articles of housefurniture], but no  
express agreement was made as to the price.(2). The goods were reasonably worth . . . . . rupees.(3).  
The defendant has not paid the money.[As in paras 4 and 5 of Form No. 1, and relief claimed.]**No.  
5Goods Made at Dependent's Request, and not Accepted**(Title)A. B., the above-named  
plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . ., E.F. agreed with the  
plaintiff that the plaintiff should make for him [six tables and fifty chairs] and that E.F. should pay  
for the goods on delivery . . . . . rupees.(2). The plaintiff made the goods, and on the . .  
. . . . . day of . . . . . 20. . . . ., offered to deliver them to E.F., and has ever since been ready and  
willing so to do.(3). E.F. has not accepted the goods or paid for them.[As in paras 4 and 5 of Form  
No. 1, and Relief claimed.]**No. 6Deficiency Upon a Re-sale [Goods Sold at Auction]**(Title)A.  
B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . ., the  
plaintiff put up at auction sundry [goods], subject to the condition that all goods not paid for and  
removed by the purchaser within [ten days] after the sale should be re-sold by auction on his  
account, of which condition the defendant had notice.(2). The defendant purchased [one crate of  
crockery] at the auction at the price of . . . . . rupees.(3). The plaintiff was ready and willing to  
deliver the goods to the defendant on the date of the sale and for [ten days] after.(4). The defendant  
did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor  
afterwards.(5). On the . . . . . day of . . . . . 20. . . . ., the plaintiff re-sold the [crate of  
crockery], on account of the defendant, by public auction, for . . . . . rupees.(6). The expenses  
attendant upon such re-sale amounted to . . . . . rupees.(7). The defendant has not paid the  
deficiency thus arising, amounting to rupees.[As in paras 4 and 5 of Form No. 1, and Relief  
claimed.]**No. 7Services at a Reasonable Rate**(Title)A. B., the above-named plaintiff, states as  
follows:-(1). Between the . . . . . day of . . . . . 20. . . . ., and the . . . . . day of 20. . . . . at . . . . .,  
plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no  
express agreement was made as to the sum to be paid for such services.(2). The services were  
reasonably worth . . . . . rupees.(3). The defendant has not paid the money.[As in paras 4 and 5 of  
Form No. 1, and Relief claimed.]**No. 8Services and Materials at a Reasonable Cost**(Title)A.  
B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . ., at . . . . .,  
the plaintiff built a house [known as No. . . . ., in. . . . .], and furnished the materials therefor, for the  
defendant, at his request, but no express agreement was made as to the amount to be paid for such  
work and materials.(2). The work done and materials supplied were reasonably worth . . . . .  
rupees.(3). The defendant has not paid the money.[As in paras 4 and 5 of Form No. 1, and Relief  
claimed.]**No. 9Use and Occupation**(Title)A.B., the above-named plaintiff, executor of the will of  
X. Y., deceased, states as follows:-(1). That the defendant occupied the [house No. . . . ., street], by  
permission of the said X. Y., from the . . . . . day of. . . 20 . . . . ., until the day of . . . . . 20 . . . . ., and no  
agreement was made as to payment for the use of the said premises.(2). That the use of the said

premises for the said period was reasonably worth . . . rupees.(3). The defendant has not paid the money.[As in paras 4 and 5 of Form No. 1.](4). The plaintiff as executor of X. Y., claims (Relief claimed).**No. 10On an Award**(Title)A. B., the above-named, plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20 . . . , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay]. agreed in writing to submit the difference to the arbitration of E.F. and G.H. and the original document is annexed hereto.(2). On the . . . . . day of . . . . . 20. . . , the arbitrators awarded that the defendant should [pay the plaintiff . . . rupees].(3). The defendant has not paid the money.[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]**No. 11On a Foreign Judgment**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . , at . . . , in the State [or Kingdom] of the . . . . . Court of that State [or Kingdom,] in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff . . . . . rupees, with interest from the said date.(2). The defendant has not paid the money.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]**No. 12Against Surety for Payment of Rent**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day . . . . . 20. . . , E.F. hired from the plaintiff for the term of . . . . . years, the [house No. . . . . , . . . street], at the annual rent of . . . . . rupees, payable [monthly].(2). The defendant agreed, in consideration of the letting of the premises to E.F. to guarantee the punctual payment of the rent.(3). The rent for the month of . . . . . 20. . . , amounting to . . . . . rupees, has not been paid.[If, by the terms of the agreement, notice is required to be given to the surety, add:-](4). On the . . . . . day of . . . . . 20. . . , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.(5). The defendant has not paid the same.[As in paras 4 and 5 of Form No. 1, and relief claimed.]**No. 13Breach of Agreement to Purchase Land**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.[Or, on the . . . . . day of . . . . . 20. . . , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of . . .for. . . rupees.](2). On the . . . . . day of . . . . . 20. . . , the plaintiff, being then the absolute owner of the property [land the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.(3). The defendant has not paid the money.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]**No. 14Not Delivering Goods Sold**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the . . .day of. . . 20. . . , and that the plaintiff should pay therefor . . . . . rupees on delivery.(2). On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.(3). The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]**No. 15Wrongful Dismissal**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the

defendant should employ the plaintiff as such for the term of [one year] and pay him for his services . . . . . rupees [monthly].(2). On the . . . . . day of . . . . . 20. . . . , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.(3). On the . . . . . day of . . . . . 20. . . . , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]**No. 16Breach of Contract to Serve**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of . . . rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].(2). The plaintiff has always been ready and willing to perform his part of the agreement and on the day of . . . . . 20. . . . , offered so to do.(3). The defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the . . . day of . . . 20. . . , he refused to serve the plaintiff as aforesaid.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]**No. 17Against a Builder for Defective Workmanship**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [or State the tenor of the contract.](2). The plaintiff duly performed all the conditions of the agreement on his part.](3). The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner]. [As in paras 4 and 5 of Form No. 1, and Relief claimed.]**No. 18On a Bond for the Fidelity of a Clerk**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . , the plaintiff took E.F. into his employment as a clerk.(2). In consideration thereof, on the . . . . . day of . . . . . 20. . . . , the defendant agreed with the plaintiff that if E.F., should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding . . . . . rupees.[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of . . . . . rupees, subject to the condition that if E.F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.][Or, 2 In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.](3). Between the . . . . . day of . . . . . 20. . . . , and the . . . . . day of 20. . . . , E.F. received money and other property, amounting to the value of . . . . . rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]**No. 19By Tenant against Landlord, with Special Damage**(Title)A. B., the above-named plaintiff, states as follows:-(1). On the . . . . . day of . . . . . 20. . . . , the defendant, by a registered instrument, let to the plaintiff [the house No. . . . . Street] for the term of . . . . . years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.(2). All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.(3)On the . . . . . day of . . . . . 20. . . . , during the said term, E.F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withhold the possession thereof from him.(4)The plaintiff was thereby [prevented from continuing the business of a tailor at the said

place, was compelled to expend . . . . . rupees in moving, and lost the custom of G.H. and I.J. by such removal]. [As in paras 4 and 5 of Form No. 1, and Relief claimed.] **No. 20 On an Agreement of Indemnity** (Title) A. B., the above-named plaintiff, states as follows:-(1) On the . . . . . day of . . . . . 20 . . . , the plaintiff and defendant, being partners in trade under the style of A.B, and C.D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm. (2) The plaintiff duly performed all the conditions of the agreement on his part. (3) On the . . . . . day of . . . . . 20 . . . , [a judgment was recovered against the plaintiff and defendant by E.F., in the High Court of Judicature at . . . . . , upon a debt due from the firm to E.F. and on the day of 20 . . . ,] the plaintiff paid . . . . . rupees [in satisfaction of the same]. (4) The defendant has not paid the same to the plaintiff. [As in paras 4 and 5 of Form No. 1, and Relief claimed.] **No. 21 Procuring Property by Fraud** (Title) A. B., the above-named plaintiff, states as follows:-(1) On the . . . . . day . . . . . 20 . . . , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth . . . . . rupees over all his liabilities]. (2) The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of . . . . . rupees. (3) The said representations were false [or state the particular falsehoods] and were then known by the defendant to be so. (4) The defendant has not paid for the goods. [Or, if the goods were not delivered.] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended. . . . rupees. [As in paras 4 and 5 of Form No. 1, and Relief claimed.] **No. 22 Fraudulently Procuring Credit to be given to another Person** (Title) A. B., the above-named plaintiff, states as follows:-(1) On the . . . . . day of . . . . . 20 . . . , the defendant represented to the plaintiff that E.F., was solvent and in good credit, and worth . . . . . rupees over all his liabilities [or that E.F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit]. (2) The plaintiff was thereby induced to sell to E.F. (rice) of the value of . . . . . rupees [on months credit]. (3) The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff]. (4) E.F. [did not pay for the said goods at the expiration of the credit aforesaid, [or] has not paid for the said rice, and the plaintiff has wholly lost the same. [As in paras 4 and 5 of Form No. 1, and Relief claimed.] **No. 23 Polluting the Water under the Plaintiff's Land** (Title) A. B., the above-named plaintiff, states as follows:-(1) The plaintiff is, and at all the time hereinafter mentioned was, possessed of certain land called . . . . . and situate in . . . . . and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted. (2) On the . . . . . day of . . . . . 20 . . . , the defendant wrongfully fouled and polluted and well and the water therein and the springs and streams of water which flowed into the well. (3) In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water. [As in paras 4 and 5 of Form No. 1, and Relief claimed.] **No. 24 Carrying on a Noxious Manufacture** (Title) A. B., the above-named plaintiff, states as follows:-(1) The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called . . . , situate in . . . . . . (2) Ever since the . . . . . day of . . . . . 20 . . . , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome

smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.(3)Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.(4)The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 25Obstructing a Right of Way**(Title)A. B., the above-named plaintiff, states as follows:-(1)The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of . . . . .].(2)He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or or foot] at all times of the year.(3)On the . . . . . day of . . . . . 20. . . , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or or food, or in any manner] along the way [and has ever since wrongfully obstructed the same].(4)(State special damage, if any.)[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 26Obstructing a Highway**(Title)(1) The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from. . . . . to . . . . . so as to obstruct it.(2)Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones, [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 27Diverting a Water-course**(Title)A. B., the above-named plaintiff, states as follows:-(1)The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the . . . . . , in the village of . . . . . , district of . . . . . .(2)By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.(3)On the . . . . . day of . . . . . 20. . . , the defendant, by cutting the bank of the stream, wrongfully divered the water thereof, so that less water ran into the plaintiff's mill.(4)By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind . . . . . sacks per day.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 28Obstructing a Right to Use Water for Irrigation**(Title)A. B., the above-named plaintiff, states as follows:-(1)Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.(2)On the . . . . . day of . . . . . 20. . . , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 29Injuries Caused by Negligence on a Railroad**(Title)A. B., the above-named plaintiff, states as follows :-(1)On the . . . . . day . . . . . 20. . . , the defendants were common carriers of passengers by railway between . . . . . and . . . . .(2)On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.(3)While he was such passenger, at . . . . . [or near the station of. . . . . or . . . . . between the stations of. . . . .and. . . . .], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance and is permanently disabled from carrying on his former business as [a salesman].[As in paras 4 and 5 of Form No. 1,

and Relief claimed.][Or thus:- 2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendant's railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para 3.]

**No. 30 Injuries Caused by Negligent Driving**(Title)A. B., the above-named plaintiff, states as follows:-(1)The plaintiff is a shoemaker, carrying on business at . . . . . The defendant is a merchant of. . . . .

(2)On the . . . . . day of . . . . . 20 . . . , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.(3)By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 31 For Malicious Prosecution**(Title)A. B., the above-named plaintiff, states as follows:-(1)On the . . . . . day of . . . . . 20 . . . , the defendant obtained a warrant of arrest from . . . . . [a magistrate of the said city, or as the case may be] on a charge of . . . . . , and the plaintiff was arrested thereon, and imprisoned for . . . . . [days, or hours, and gave bail in the sum of . . . . . rupees to obtain his release].(2)In so doing the defendant acted maliciously and without reasonable or probable cause.(3)On the . . . . . day of . . . . . 20 . . . , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.(4)Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or in consequence of the said arrest, the plaintiff lost his situation as clerk to one E.F., or in consequence the plaintiff suffered plain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

**No. 32 Movable Wrongfully Detained**(Title)A. B., the above-named plaintiff, states as follows:-(1)On the . . . . . day of . . . . . 20 . . . , plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods.] the estimated value of which is . . . . . rupees.(2)From that day until the commencement of this suit the defendant has detained the same from the plaintiff.(3)Before the commencement of the suit, to wit, on the . . . . . day of . . . . . 20 . . . , the plaintiff demanded the same from the defendant, but he refused to deliver them.[As in paras 4 and 5 of Form No. 1](6)The plaintiff claims-(1)delivery of the said goods, or . . . . . rupees, in case delivery cannot be had;(2). . . . . rupees compensation for the detention thereof.

**No. 33 Against a Fraudulent Purchaser and his Transferee with Notice**(Title)A. B., the above-named plaintiff, states as follows:-(1)On the . . . . . day of . . . . . 20 . . . , the defendant C.D., for the purpose of including the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth . . . . . rupees over all his liabilities].(2)The plaintiff was thereby induced to sell and deliver to C.D. [one hundred boxes of tea], the estimated value of which is . . . . . rupees.(3)The said representations were false, and were



then known by C.D. to be so [or at the time of making the said representations, C. D. was insolvent, and knew himself to be so].(4)C. D. afterwards transferred the said goods to the defendant E.F. without consideration [or who had notice of the falsity of the representation].[As in paras 4 and 5 of Form No.1](7)The plaintiff claims-(1)delivery of the said goods, or . . . . . rupees, in case delivery cannot be had;(2). . . . . rupees compensation for the detention thereof.**No. 34 Rescission of a Contract on the Ground of Mistake**(Title)A.B., the above-named plaintiff, states as follows:-(1)On the . . . . . day of . . . . . 20. . . , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at . . . . . , contained [ten bighas].(2)The plaintiff was thereby induced to purchase the same at the price of . . . . . rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.(3)On the . . . . . day of . . . . . 20. . . , the plaintiff paid the defendant rupees as part of the purchase money.(4)That the said piece of ground contained in fact only [five bighas].[As in paras 4 and 5 of Form No. 1](7)The plaintiff claims-(1). . . . . rupees, with interest from the . . . . . day of . . . . . 20. . . ;(2)that the said agreement be delivered up and cancelled.**No. 35 An Injunction Restraining Waste**(Title)A.B., the above-named plaintiff, states as follows:-(1)The plaintiff is the absolute owner of [describe the property].(2)The defendant is in possession of the same under a lease from the plaintiff.(3)The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.[As in paras 4 and 5 of Form No. 1](6)The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.[Pecuniary compensation may also be claimed.]**No. 36 Injunction Restraining Nuisance**(Title)A.B., the above-named plaintiff, states as follows:-(1)Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. . . . . , Street, Calcutta].(2)The defendant is, and at all the said times was, the absolute owner of . . . . . [a plot of ground in the same street . . . . . ].(3)On the . . . . . day of . . . . . 20. . . , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].(4)[ In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.][As in paras 4 and 5 of Form No. 1](7)The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.**No. 37 Public Nuisance**(Title)A.B., the above-named plaintiff, states as follows:-(1)The defendant has wrongly heaped up earth and stones on a public road known as . . . . . Street at . . . . . so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.(2)[ The plaintiff has obtained the leave of the Court for the institution of this suit.][Substituted by Act 104 of 1976, Section 93, for paragraph 2 (w.e.f. 1.2.1977).][As in paras 4 and 5 of Form No. 1](5)The plaintiff claims-(1)a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;(2)an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.**No. 38 Injunction against the Diversion of a Water-course**(Title)A.B., the above-named plaintiff, states as follows:-[As in Form No. 27.]The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.**No. 39 Restoration of Movable Property Threatened with Destruction and for an Injunction**(Title)A.B., the above-named plaintiff, states as

follows:-(1)Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfatherher which was executed by an eminent painter], and of which no duplicate exists [or state any facts showing that the property is of a kind that cannot be replaced by money].(2)On the . . . . . day of . . . . . 20. . . , he deposited the same for safe-keeping with the defendant.(3)On the . . . . . day of . . . . . 20. . . , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.(4)The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.(5)No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting];[As in paras 4 and 5 of Form No. 1].(8)The plaintiff claims-(1)that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];(2)That he be compelled to deliver the same to the plaintiff.**No. 40Interpleader**(Title)A.B., the above-named plaintiff, states as follows:-(1)Before the date of the claims hereinafter mentioned G.H. deposited with the plaintiff [describe the property] for [safe-keeping].(2)The defendant C.D. claims the same [under an alleged assignment thereof to him from G.H.].(3)The defendant E.F. also claims the same [under an order of G.H. transferring the same to him.](4)The plaintiff is ignorant of the respective rights of the defendants.(5). He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.(6). The suit is not brought by collusion with either of the defendants.[As in paras 4 and 5 of Form No. 1](9). The plaintiff claims-(1)that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;(2)that they be required to interplead together concerning their claims to the said property;(3)[ that some person be authorised to receive the said property pending such litigation;](4)that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.**No. 41Administration by Creditor on Behalf of Himself and all Other Creditors**(Title)A.B., the above-named plaintiff, states as follows:-(1)E.F., late of . . . . . , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of. . . [here insert nature of debt and security, if any].(2)E.F., died on or about the day of. . . . . By his last will, dated the . . . . . day of . . . . . he appointed C.D. his executor [or devised his estate in trust, etc., or died intestate, as the case may be.](3)The will was proved by C.D. [or] letters of administration were granted, etc.].(4)The defendant has possessed himself of the movable [and immovable, or the proceeds of the immovable property of E.F., and has not paid the plaintiff his debt.[As in paras 4 and 5 of Form No. 1](7)The plaintiff claims that an account may be taken of the movable [and immovable] property of E.F., deceased, and that the same may be administered under the decree of the Court.**No. 42Administration by Specific Legatee**(Title)[Alter Form No. 41 thus][Omit paragraph 1 and commence paragraph 2] E.F., late of . . . . . , died on or about the . . . . . day of . . . . . By his last will, dated the . . . . . day of . . . . . he appointed C.D., his executor, and bequeathed to the plaintiff [here state the specific legacy]. For paragraph 4 substitute-The defendant is in possession of the movable property of E.F., and, amongst other things, of the said [here name the subject of the specific bequest].For the Commencement of paragraph 7 substitute-The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest]. or that, etc.**No. 43Administration by Pecuniary Legatee**(Title)[Alter Form No. 41 thus][Omit paragraph 1 and substitute for paragraph 2] E.F., late of . . . . . , died on or about the . . . . . day of . . . . . By his last will, dated the . . . . . day of . . . . . he appointed C.D. his executor, and bequeathed to the plaintiff a legacy of . . . . . rupees.In paragraph 4 substitute "legacy" for "debt"**Another**

**form**(Title)E.F., the above-named plaintiff, states as follows:-(1). A.B. of K. in the . . . . . died on the . . . . . day of . . . . . By his last will, dated the . . . . . day of . . . . ., he appointed the defendant and M. N. [who died in the testator's lifetime] his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff and such failure of his issue as aforesaid.(2). The will was proved by the defendant on the . . . . . day of . . . . . The plaintiff has not been married.(3). The testator was at his death entitled to movable and immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the movable property; he has sold some part of the immovable property.[As in paras 4 and 5 of Form No. 1.](6). The plaintiff claims-(1)to have the movable and immovable property of A.B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;(2)such further or other relief as the nature of the case may require.**No. 44Execution of Trusts**(Title)A.B., the above-named plaintiff, states as follows:-(1)He is one of the trustees under an instrument of settlement bearing date on or about the . . . . . day of . . . . . made upon the marriage of E.F. and G.H., the father and mother of the defendant [or an instrument of transfer of the estate and effects of E.F. for the benefit C.D., the defendant, and the other creditors of E.F.].(2)A.B. has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the movable and immovable property transferred by the said instrument.(3)C.D. claims to be entitled to a beneficial interest under the instrument.[As in paras 4 and 5 of Form. No. 1.](6)The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, or of part of the said, immovable property, or movable, or the proceeds of the sale of, or of part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of C.D., the defendant, and all other persons who may be interested in such administration, in the presence of C.D. and such other persons so interested as the Court may direct, or that C.D. may show good cause to the contrary.[N.B.-Where the suit is by a beneficiary, the plaint may be modelled mutatis mutandis on the plaint by a legatee.]

**FORECLOSURE OR SALE**(Title)A.B., the above-named plaintiff, states as follows:-(1)The plaintiff is mortgagee of lands belonging to the defendant.(2)The following are the particular of the mortgage:-(a)(date);(b)(names of mortgagor and mortgagee);(c)(sum secured);(d)(rate of interest);(e)(property subject to mortgage);(f)(amount now due);(g)(if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).(If the plaintiff is mortgagee in possession add).(3)The plaintiff took possession of the mortgaged property on the . . . . . day of . . . . . and is ready to account as mortgagee in possession from that time.[As in paras 4 and 5 of Form No. 1.](6)The plaintiff claims-(1)payment, or in default [sale or] foreclosure [and possession];[Where Order 34, rule 6, applies.](2)in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff then that liberty be reserved to the plaintiff to apply for [an order for the balance] [ Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 93, for " a decree for the balance " (w.e.f 1.2.1977).].**No. 46Redemption**(Title)A.B., the above-named plaintiff, states as follows:-(1)The plaintiff is

mortgagor of lands of which the defendant is mortgagee.(2)The following are the particulars of the mortgage:-(a)(date);(b)(names of mortgagor and mortgagee);(c)(sum secured);(d)(rate of interest);(e)(property subject to mortgage);(f)(If the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).(If the defendant is mortgagee in possession, add)(3)The defendant has taken possession [or has received the rents] of the mortgaged property.[As in paras 4 and 5 of Form No. 1.](6)The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof]. [together with mesne profits] [Added by the Code of Civil Procedure (Amendment) Act, 1976, Section 93 (w.e.f. 1.2.1977).]**No. 47**Specific Performance (No. 1)(Title)A.B., the above-named plaintiff, states as follows:-(1)By an agreement dated the . . . . . day of . . . . . and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and referred to, for the sum of . . . . . rupees.(2)The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.(3)The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.[As in paras 4 and 5 of Form No. 1.](6)The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.**No. 48**Specific Performance (No. 2)(Title)A.B., the above-named plaintiff, states as follows:-(1)On the . . . . . day of . . . . . 20. . . , the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.The defendant was absolutely entitled to the immovable property described in the agreement.(2)On the . . . . . day of . . . . . 20. . . , the plaintiff Tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.(3)On the . . day of 19 , the plaintiff again demanded such transfer, [or the defendant refused to transfer the same to the plaintiff.](4)The defendant has not executed any instrument of transfer(5)The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.[As in paras 4 and 5 of Form No. 1](8)The plaintiff claims-(1)that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];(2). . . . . rupees compensation for withholding the same.**No. 49**Partnership(Title)A.B., the above-named plaintiff, states as follows:-(1)He and C.D., the defendant, have been for . . . . . years [or months] past carrying on business together under articles of partnership in writing [or under a deed, or under a verbal agreement].(2)Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners, [Or the defendant has committed the following breaches of the partnership articles:-(1)(2)(3). . . . . ] [As in paras 4 and 5 of Form No. 1.](5)The plaintiff claims-(1)dissolution of the partnership;(2)that accounts be taken;(3)that a receiver be appointed.(N.B.-In suits for the winding-up of any partnership, omits the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

## 4. WRITTEN STATEMENTS

**General defences**Denial.The defendant denies that (set out facts).The defendant does not admit that (set out facts).The defendant admits that . . . . . but says that**Protest.** The defendant denies that he made the contract alleged or any contract with the plaintiff. The defendant denies that he

contracted with the plaintiff as alleged or at all. The defendant admits assets but not the plaintiff's claim. The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them. **Limitation.** The suit is barred by article . . . . . or article . . . . . of the second schedule to the [Indian Limitation Act, 1877 (15 of 1877)] [ See now the Limitation Act, 1963 (36 of 1963).]. **Jurisdiction.** The Court has no jurisdiction to hear the suit on the ground that (set forth the grounds.) On the . . . . . day of . . . . . a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action. **Insolvency.** The defendant has been adjudged an insolvent. The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver. **Minority.** The defendant was a minor at the time of making the alleged contract. **Payment into Court.** The defendant as to the whole claim (or as to Rs. . . . . part of the money claimed) (or as the case may be) has paid into Court Rs. . . . . and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid). **Performance remitted.** The performance of the promise alleged was remitted on the (date). **Rescission.** The contract was rescinded by agreement between the plaintiff and defendant. **Res judicata.** The plaintiff's claim is barred by the decree in suit (give the reference). **Estoppel.** The plaintiff is estopped from denying the truth of (insert statement as to which estoppel is claimed) because (here state the facts relied on as creating the estoppel.) Ground of defence subsequent to institution of suit. Since the institution of the suit, that is to say, on the . . . day of . . . . . (set out facts.) **No. 1 Defence in Suits for Goods Sold and Delivered** (1) The defendant did not order the goods. (2) The goods were not delivered to the defendant. (3) The price was not Rs. [or]

- |   |    |
|---|----|
| 4.                                      | 1. |
| 5. Except as to Rs. ...., same as ..... | 2. |
| 6.                                      | 3. |

(7) defendant satisfied the claim by payment after suit to the plaintiff on the . . . . . day of 20. . . . **No. 2 Defence In Suits On Bonds** (1). The bond is not the defendant's bond. (2). The defendant made payment to the plaintiff on the day according to the condition of the bond. (3). The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond. **No. 3 Defence In Suits On Guarantees** (1). The principal satisfied the claim by payment before suit. (2). The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement. **No. 4 Defence In Any Suit For Debt** (1) As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff Particulars are as follows:- Rs.

Rs.

1907 January 25th ... .. 150

" February 1st ... .. 50

Total 200

(2) As to the whole [or as to Rs. . . . , part of the money claimed] the defendant made tender before suit of Rs. . . . and has paid the same into Court. **No. 5 Defence In Suits For Injuries Caused By Negligent Driving** (1) The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to. . . of . . . . . Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control

the said carriage was, was the servant of the said.(2)The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.(3)The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.(4)The defendant does not admit the statements contained in the third paragraph of the plaint.**No. 6Defence In All Suits For Wrongs**(1)Denial of the several acts [or matters] complained of.**No. 7Defence In Suits For Detention Of Goods**(1)The goods were not the property of the plaintiff.(2)The goods were detained for a lien to which the defendant was entitled.Particulars are as follows:- 1907 May 3rd, To carriage of the goods claimed from Delhi to Calcutta:- 45. maunds at Rs. 2 per maund. . . .Rs. 90.**No. 8Defence In Suits For Infringement Of Copyright**(1)The plainiff is not the author [assignee, etc.](2)The book was not registered.(3)The defendant did not infringe.**No. 9Defence In Suits For Infringement Of Trade Mark**(1)The trade mark is not the plaintiff's(2)The alleged trade mark is not a trade mark.(3)The defendant did not infringe.**No. 10Defence In Suits Relating To Nuisances**(1)The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights.](2)The plaintiff's lights will not be materially interfered with by the defendant's buildings.(3)The defendant denies that he or his servants pollute the water [or do what is complained of].If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.](4)The plaintiff has been guilty of laches of which the following are particulars:-/1870. Plaintiff's mill began to work./1871. Plaintiff came into possession./1883. First complaint.(5)As to the plaintiff's claim for damages the defendant will rely on the above grounds of the defence, and says that the acts complained of have not produced any damage to the plaintiff [If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]**No. 11Defence To Suit For Foreclosure**(1)The defendant did not execute the mortgage.(2)The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied).(3)The suit is barred by article . . . . . of the second scheduled to the [Indian Limitation Act, 1877 (15 of 1877).] [See now the Limitation Act, 1963 (36 of 1963).](4)The following payments have been made, viz.:-

Rs.

(Insert date) ... .. 1,000

(Insert date) ... .. 500

(5)The plaintiff took possession on the . . . . of. . . ., and has received the rents ever since.(6)The plaintiff released the debt on the. . . of. . . .(7)The defendant transferred all his interest to A.B. by a document dated.**No. 12Defence To Suit For Redemption**(1)The plaintiff's right to redeem is barred by article . . . of the second schedule to the [Indian Limitation Act, 1877 (15 of 1877).] [see now the Limitation Act, 1963 (36 of 1963).](2)The plaintiff transferred all interest in the property to A.B.(3)The defendant, by a document dated the . . .... day of .... transferred all his interest in the mortgage-debt and property comprised in the mortgage to A.B.(4)The defendant never too possession of the mortgaged property, or received the rents thereof.(If the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits.)**No. 13Defence To Suit For Specific Performance**(1)The defendant did not enter into the agreement.(2)A. B. was not the agent of the defendant (if alleged by plaintiff).(3)The plaintiff has not performed the following conditions-(Conditions).(4)The defendant did not-(alleged acts of part performance).(5)The plaintiff's title to the property agreed to be sold is not such as the

defendant is bound to accept by reason of the following matter-(State why).(6)The agreement is uncertain in the following respects-(State them).(7)(or)The plaintiff has been guilty of delay.(8)(or)The plaintiff has been guilty of fraud (or misrepresentation).(9)(or)The agreement is unfair.(10)(or)The agreement was entered into by mistake.(11)The following are particulars of (7), (8), (9), (10) (or as the case may be).(12)The agreement was rescinded under Conditions of Sale, No. 11 (or by mutual agreement).(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the [Indian Limitation Act,] [See now the Limitation Act, 1963 (36 of 1963).] accord and satisfaction, release, fraud, etc.)**No. 14 Defence In Administration Suit By Pecuniary Legatee**(1)A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs. . . . . . , and the testator had some movable property which the defendant got in, and which produced the net sum of Rs. . . . . .(2)The defendant applied the whole of the said sums and the sum of Rs. . . . . . which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.(3)The defendant made up his accounts and sent a copy thereof to the plaintiff on the . . . . . day of . . . . . 20 . . . , and offered to plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.(4)The defendant submits that the plaintiff ought to pay the cost of this suit.**No. 15 Probate Of Will In Solemn Form**(1)The said will and codicil of the deceased were not duly executed according to the provisions of the [Indian Succession Act, 1865 (10 of 1865)] [See now the Indian Succession Act, 1925 (39 of 1925).] [or of the [Hindu Wills Act, 1870 (21 of 1870)] [See now the Indian Succession Act, 1925 (36 of 1936).].(2)The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.(3)The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].(4)The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [state the nature of the fraud].(5)The deceased at the time of the execution of the said will and codicil did not know and approve the contents thereof [or of the contents of the residuary clause in the said will, as the case may be].(6)The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.The defendant claims-(1)that the Court will pronounce against the said will and codicil propounded by the plaintiff;(2)that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.**No. 16 Particulars (Order 6, Rule 5.) (Title of suit)**Particulars.-The following are the particulars of (here state the matters in respect of which particulars have been ordered) delivered pursuant to the order of the . . . . . of (Here set out the particulars ordered in paragraphs if necessary.)

## APPENDIX – B

**PROCESS No. 1** Summons For Disposal Of Suit (Order 5, Rule 1, 5.)(Title)To[Name, description and place of residence.]Whereas has instituted a suit against you for . . . . . you are hereby summoned to appear in this Court in person or by a pleader duly instructed (and able to answer all material questions relating to the suit, or who shall be accompanied by some person, able to answer

all such questions, on the ..... day of ..... 20 ....., at ..... o'clock in the .....  
 ... noon, to answer the claim; and as the day fixed for your appearance is appointed for the final  
 disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose  
 evidence and all the documents upon which you intend to rely in support of your defence. Take  
 notice that, in default of your appearance on the day before mentioned, the suit will be heard and  
 determined in your absence. Given under my hand and the seal of the Court, this ..... of .....  
 ..... 20 ..... Judge. Notice.-

**1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.**

**2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.**

High Courts Amendments-[Allahabad].-After Form No. 1 insert the following form:-"No.  
 1-ASUMMONS/NOTICE FOR SERVICE BY ADVERTISEMENT IN A NEWSPAPER(Order  
 5 Rule 20)(Title)To(Name and address)Whereas .....has instituted the above suit/filed  
 an application against you for ..... you are hereby summoned to appear in this Court in  
 person or by a pleader on the .....day of.....20.....at.....o'clock, to answer the  
 same, failing which the suit/application will be disposed of ex parte. Given under my hand and the  
 seal of the Court, this..... day of .....20.....judge.(25-4-1987).[Andhra  
 Pradesh].-Same as that of Madras (ii).[Assam].-Same as that of Calcutta.[Bombay].-The following  
 notice shall be inserted in Forms Nos. 1,2,3,4,5 and 6:-"Notice.-Also take notice that in default of  
 your filing an address for service on or before the date mentioned you are liable to have your defence  
 struck out."-(1.10.1983).[Calcutta].-Insert the following Form and number it as 1-A:-"No.  
 1-ASUMMONS TO DEFENDANT FOR ASCERTAINMENT WHETHER THE SUIT WILL BE  
 CONTESTED(Order 5, Rule 1 and 5)(Title)To(Name, description and place of residence)Whereas  
 .....has instituted a suit against you for....., you are hereby summoned  
 to appear in this Court in person or by a pleader duly instructed and able to answer all material  
 questions relating to the suit on the .....day of.....20.....at .....o'clock in the  
 .....noon in order that on that day you may inform the Court whether you will or will not  
 contest the claim either in whole or in part and in order that in the event of your deciding to contest  
 the claim either in whole or in part directions may be given to you as to the date upon which your  
 written statement is to be filed and the witness or witnesses upon whose evidence you intend to rely  
 in support of your defence are to be produced and also the document or documents upon which you  
 intend to rely. Take notice that, in default of your appearance on the day before-mentioned, the suit  
 will be heard and determined in your absence and take further notice that in the event of your  
 admitting the claim either in whole. or in part the Court will forthwith pass judgment in accordance  
 with such admissions. Given under my hand and the seal of the Court, this .....day



of.....20.....Seal Judge. Notice.-If you admit the claim either in whole or in part you should come prepared to pay into Court the money due by virtue of such admission together with the costs of the suit to avoid execution of any decree which may be passed against your person or property or both." [Gauhati].-Same as that of Calcutta. [Karnataka].-Same as that of Madras except that above "Notice" the words "Judge or the Chief Ministerial officer" have been substituted for "Judge"-(R.O.C. No. 2526/1959, dated 9.2.1967). [Kerala].-Same as that of Madras (9.6.1959). [Madras].-After Form No. 1, insert the following as Form No. 1-A:- "No. 1-A SUMMONS FOR ASCERTAINING WHETHER A SUIT IS CONTESTED OR NOT, AND IF NOT CONTESTED FOR ITS IMMEDIATE DISPOSAL (Order 5, Rule 1, 5) (Title) To (Name, description and place of residence) Whereas ..... has instituted a suit against you for..... you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit (or who shall be accompanied by some { person able to answer all such questions) on the ..... day I of.....20..... at..... o'clock in the ..... noon and to state whether you contest or do not contest the claim, and, if you contest, to receive directions of Court as to the date on which you have to file the written statement, the date of trial and other matters. Take notice that in the event of the claim not being contested the suit shall be decided at once. Take further notice, that in default of your appearance on the day and hour before mentioned the suit will be heard and determined in your absence. Given under my hand and the seal of the Court, this ..... day of.....20..... Seal Judge. Notice.-If you admit the claim, you should pay the money into Court together with the cost of the suit, to avoid execution of the decree, which may be against your person or property or both." No. 2 SUMMONS FOR SETTLEMENT OF ISSUES [Order 5, Rule 1, 5] (Title) To (Name, description and place of residence) Whereas ..... has instituted a suit against you for..... you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to suit, or who shall be accompanied by some person able to answer all such questions, on the ..... day of .....20..... at..... o'clock in the ..... noon, to answer the claim; [and further you are hereby directed to file on that day a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counter-claim, and where you rely on any other document whether in your possession or power or not, as evidence in support of your defence or claim for set-off, or counter-claim you shall enter such documents in a list to be annexed to the written statement.] [Substituted by the Code of Civil Procedure (Amendment) Act, 2076, Section 94, for certain words (w.e.f. 1.2.2077).] Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence. Given under my hand and the seal of the Court, this..... day of.....20..... Judge. Notice.-

**1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.**

**2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.**

High Court Amendment-[Bombay].-Same as in Form No. 1, Appendix B.**No. 3****Summons To Appear In Person** (Order 5, Rule 3.)(Title)To[Name, description and place of residence.]Whereas has instituted a suit against you for ..... you are hereby summoned to appear in this Court in person on the ..... day of ..... 20... at ..... o'clock in the ..... noon, to answer the claim;183 and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.Take notice that, in default of your appearance of the day before mentioned, the suit will be heard and determined in your absence.Given under my hand and the seal of the Court, this ..... day of ..... 20 ... Judge.High Court Amendment-[Bombay].-Same as in Form No. 1, Appendix B.**[No. 4]**[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 94, for Form No. 4 (w.e.f. 1.2.1977).]**Summons in a Summary Suit**(Order 37, Rule 2)(Title)To[Name, description and place of residence.]Whereas . . . . . has instituted a suit against you under Order XXXVII of the Code of Civil Procedure,1908, for Rs. .... and interest, you are hereby summoned to cause and appearance to be entered for you, within ten days from the service hereof, in default hereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs. .... and the sum of Rs. .... for costs, together with such interest, if any, as the Court may order.If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at a hearing of which you will be entitled to move the Court for leave to defend the suit.Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend.Given under my hand and the seal of the Court, this ..... day of ..... 20...Judge.High Court Amendment-[Bombay].-Same as in Form No. 1, Appendix B.**[No. 4A]**[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 94 (w.e.f. 1.2.1977).]**SUMMONS FOR JUDGMENT IN A SUMMARY SUIT**[Order 37 Rule 3](Title)In the ..... Court, at ..... Suit No..... of 20.....XYZ  
..... PlaintiffVersusABC  
.....DefendantUpon reading the affidavit of the plaintiff the Court makes the following order, namely:-Let all parties concerned attend the Court or Judge, as the case may be, on the..... dayof..... 20..... at.....o'clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several, insert names) for Rs ..... and for interest and costs.Dated the..... day of.....20....]High Court Amendment-[Bombay].-Delete Form No. 4-A.**No. 5**Notice to Person who, the Court Considers, should be added as Co-Plaintiff(**Order 1, Rule 10.**)(Title)To[Name, description and place of residence.]Whereas ..... has instituted the above suit against ..... for ..... .. and whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved.Take notice that you should on or before the ..... day of ..... 20..., signify to this Court whether you consent to be so added.Given under my hand and the seal of the Court, this ..... day of ..... 20...,Judge.High Court Amendment-[Bombay].-Same as in

Form No. 1, Appendix B.**No. 6 Summons to Legal Representative of a Deceased Defendant**(Order 22, Rule 4.)(Title)ToWhereas the plaintiff . . . . . instituted a suit in this Court on the . . . . . day of . . . . . 20..., against the defendant . . . . . who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said, deceased, and desiring that you be made the defendant in his stead;You are hereby summoned to attend in this Court on the . . . . . day of . . . . . 20..., at . . . . . a.m. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20...,Judge.High Court

Amendment-[Bombay].-Same as in Form No. 1, Appendix B.**No. 7 Order for Transmission of Summons for Service in the Jurisdiction of another Court**(Order 5, Rule 21.)(Title)Whereas it is stated that defendant/witness in the above suit is at present residing in . . . . . : It is ordered that a summons returnable on the day of . . . . . 20..., be forwarded to the Court of . . . . . for service on the said defendant/witness with a duplicate of this proceeding.The court-fee of . . . . . chargeable in respect to the summons has been realised in this Court in stamps.Dated . . . . . 20 . . .Judge.High Court Amendment-[Allahabad].-Form No. 7 has been cancelled-(7th September, 1918).**No. 8 Order for Transmission of Summons to be Served on a Prisoner**(Order 5, Rule 25.)(Title)ToThe Superintendent of the Jail at.....Under the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant . . . . . who is . . . . . a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.Judge.**No. 9 Order for Transmission of Summons to be Served on a Public Servant or Soldier**(Order 5, Rules 27, 28.)(Title)ToUnder the provisions of Order V, rule 27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forward for service on the defendant . . . . . who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.Judge.High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Madras].-Substitute the words "public officer" for the words "public servant" in the heading.**No. 10 To Accompany Returns of Summons of Another Court**(Order 5, Rule 23.)Read proceeding from the . . . . . forwarding . . . . . for service on in suit No. . . . . of 20..., of that Court.Read Serving Officer's endorsement stating that the . . . . . and proof of the above having been duly taken by me on the oath of . . . . . and . . . . . it is ordered that the . . . . . be returned to the . . . . . with a copy of this proceeding.Judge.Note.-This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.High Court Amendments-[Allahabad].-Form No. 10 has been cancelled-(24.8.1918).[Bombay].-In Appendix B, for the existing Form No. 10, substitute the following as Form No. 10:-**No. 10 To Accompany Returns of Summons of Another Court**(Order 5, Rule 23.)Read proceeding from the . . . . . forwarding . . . . . for service on in suit No. . . . . of 20..., of that Court.Read Serving Officer's endorsement stating that the . . . . . and proof of the above having been duly taken by me on the oath of . . . . . and . . . . . it is ordered that the . . . . . be returned to the . . . . . with a copy of this proceeding.I hereby declare that the said summons on.....has been duly served.Judge.Note.-This form will be

applicable to process other than summons, the service of which may have to be effected in the same manner."-(1.10.1983).[Calcutta].-In the heading insert "or notice" after "summons" and insert the words "(or proof of the above having been duly made by the declaration of.....)" after the words "proof of the above having been duly taken by me on the oath of."[Gauhati].-Same as that of Calcutta.

**No. 11 Affidavit Of Process-service To Accompany Return Of A Summons Or Notice**(Order 5, Rule 18.)(Title)The Affidavit of ....., son of ..... make oath/affirm I ..... and say as follows:-(1)I am a process-server of this Court.(2)On the ..... day of ..... 20... I received a summons/notice issued by the Court ..... in Suit No. .... of 20..., in the said Court, dated the ..... day of ..... 20 ..., for service on ..... (3)The said ..... was at the time personally known to me, and I served the said summons/notice on him/her on the ..... day of...20, at about ..... o'clock in the noon at ..... by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.(a)(b)(a)Here state whether the person served signed or refused to sign the process, and in whose presence.(b)Signature of process-server.or,(3)The said ..... not being personally known to me ..... accompanied me to the said summons/notice on his/her on the ..... day of ..... 20 ..., at about. .... o'clock in the ..... noon at ..... by tendering a copy thereof to him/her and requiring his /her signature to the original summons/notice.(a)(b)(a)Here state whether the person served signed or refused to sign the process, and in whose presence.(b)Signature of process-server.or,(3)The said ..... and the house in which he ordinarily resides being personally known to me, I went to the said house, in ..... and thereon the ..... day of ..... 20..., at about ..... o'clock in the ..... noon, I did not find the said. ....(a)(b)(a)Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.(b)Signature of process-server. or,(3)One . . . . . accompanied me to ..... and there pointed out to me which he said was the house in which ..... ordinarily resides. I did not find the said there.(a)(b)(a)Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rule 15 and 17.(b)Signature of process-server.orIf substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.Sworn/Affirmed by the said ..... before me this. .... day of ..... 20...Empowered under section 139 of the Code of CivilProcedure, 1908, to administer the oath to deponents.High Court Amendments-[Calcutta].-Substitute the following for the existing Form No. 11:-"No. 11DECLARATION OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OF NOTICE[Order 5 Rule 18](Title)I. .... a process-server of this Court, declare:(1)On the ..... day of ..... 20 ....., I received a summons issued notice by the Court of ..... in Suit No..... of 20 ..... in the Court, dated ..... day of ..... 20 ....., for service on.....(2)The said ..... was at the time personally known to me, and I served the summons on him on the ..... day of ..... 20 ....., at about ..... o'clock in the ..... noon at ..... by tendering a copy thereof to him and requiring his her her signature to the original summons notice(a)(b)(a)Here state whether the person served, signed or refused to sign the process and in whose presence.(b)Signature of process-server.or,(2)The said ..... not being personally known to me ..... pointed out to me aperson whom he stated to be the said ..... and I served the said

summons/notice on him/her on notice her the ..... day of ..... 20 ..... at about..... o'clock in the noon at ..... by tendering a copy thereof to him and requiring his signature ..... to the originalher hersummons notice(a)(b)(a)Here state whether the person served, signed or refused to sign the process and in whose presence.(b)Signature of process-server.or,(2)The said ..... and the house in which he ordinarily resides being personallyknown to me, I went to the said house, in ..... and there on the ..... day of ..... 20.. at about ..... o'clock in the ..... noon, I did not find the said .....(a)(b)(a)Enter fully and exactly the manner in which the process was served, with specialreference to Order 5, rules 15 and 17.(b)Signature of process-server.or,(2)One ..... at ..... pointed out to me ..... which he said was the house inwhich ..... ordinarily resides. I did not find the said ..... there.(a)(b)(a)Enter fully and exactly the manner in which the process was served, with special reference to Order 5, Rules 15 and 17.(b)Signature of process-server.or,(3)If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service."[Gauhati].-Same as that of Calcutta.[Himachal Pradesh].-Same as that of Punjab.[Punjab].-Substitute the following Form for existing Form No. 11:-"No. 11AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE[Order 5 Rule 18](Title)The affidavit of ..... son of ..... I make oath/affirm and say as follows:-(1)1 am a process-server of this Court.(2)On the ..... day of ..... 20..., I received a summons/notice issued by the Court ..... in Suit No..... of 20....., in the said Court, dated the ..... day of ..... 20 ..... for service on .....(3)The said ..... was at the time personally known to me, and I served the said summons/notice on him/her on the ..... day of ..... 20 ..., at about ..... o'clock in the ..... noon at ..... by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice(a)(b)(a)Here state whether the person served, signed or refused to sign the process and inwhose presence.(b)Signature of process-server.or,(3)The said ..... not being personally known to me accompanied to ..... and pointed out to me a person whom he stated to be the said ..... , and I served the said summons/notice on him/her on the day of 20 ..... at about ..... o'clock, in the ..... noon at ..... by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice(a)(b)(a)Here state whether the person served, signed or refused to sign the process and inwhose presence.(b)Signature of process-server.or,(3)The said ..... and the house in which he ordinarily resides being (personally known to me)/Pointed out to me by.....I went to the said house in and there .....on the ..... day of ..... 20 ..... at o'clock in the fore/after noon I did not find the said ..... I enquired.after(a)\_\_\_\_\_ (b)\_\_\_\_\_I was told that ..... had gone to ..... and would not be back till .....Signature of process-server.or,(3)If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service. Sworn/Affirmed by the said ..... before me this day of ..... 20 .....Empowered under section 139 of the Code of CivilProcedure, 1908 to administer the oath to deponents."**No. 12Notice To Defendant**(Order 9, Rule 6.)(Title)To[Name, description and place of residence.]Whereas this day was fixed for the

hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons; Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of ..... 20... is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence. Given under my hand and the seal of the Court, this ..... .. day ..... 20... Judge. High Court Amendment-[Madras].- After Form No. 12, insert the following as Form No. 12A-**No. 12A NOTICE TO THE PROPOSED GUARDIAN OF A MINOR DEFENDANT/RESPONDENT**[Order 32, Rule 3 and 4][Omitted by R.O.C. No. 2578 of 1922, dated 8th March, 1923.]**No. 13 Summons To Witness**(Order 16, Rule 1, 5.)(Title)To Whereas your attendance is required to ..... on behalf of the ..... in the above suit, you are hereby required [personally] to appear before this Court on the ..... day of ..... 20 ... at . ..... o'clock in the forenoon, and to bring with you [or to send to this ..... Court]. A sum of Rs. ...., being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908. Given under my hand and the seal of the Court, this ..... day of ..... 20... Judge. Notice.-(1)If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.(2)If you are detained beyond the day aforesaid, a sum of Rs. .... will be tendered to you for each day's attendance beyond the day specified. High Court Amendments-[Andhra Pradesh].-Same as that of Madras (i) and (iii) except the following:-In Form No. 13-A:-(i)For the word "Crown" substitute "Government".(ii)For the words "A Government servant from the Province of.....(Name)" substitute the words "a servant of Government of India or the Government (name of State)",(iii)For the words "the Government of the Province of" substitute the words "Government of India/Government of.....(Name of the State)".(R.O.C. No. 6842/51-B1, dated 29.8.1957).[Kerala].-(i).-Same as that of Madras (i).(ii)after Form 13, the following Form shall be inserted, namely:-"No. 13-ACERTIFICATE OF ATTENDANCE TO AN OFFICER OF GOVERNMENT SUMMONED AS A WITNESS IN A SUIT TO WHICH THE GOVERNMENT IS A PARTY[Order 16 Rule 4-A](Cause title)This is to certify that ..... (name) ..... (designation) ..... being a servant of the Government of India/ of the Government of ..... (name of State) was summoned to give evidence in his official capacity on behalf of the plaintiff /defendant ..... in the above ..... and was in attendance in this Court from ..... to the day of ..... 20 ..... (inclusive) and that a sum of Rupees ..... has been paid into Court by the plaintiff /defendant towards his travelling and subsistence allowance for ..... days according to the scale prescribed by the Government of India/the Government of ..... (name of State) and that the said amount has been/will be remitted to the Government Treasury at ..... to be credited to Government under the head ..... Dated the ..... day of ..... 20 ..... Presiding Judge or Chief Ministerial Officer."[Kerala].-(i.-Same as that of Madras(i).(ii)after Form 13, the following Form shall be inserted, namely:-"No. 13-ACERTIFICATE OF ATTENDANCE TO AN OFFICER OF GOVERNMENT SUMMONED AS A WITNESS IN A SUIT TO WHICH THE GOVERNMENT IS A PARTY[Order 16 Rule 4-A](Cause title)This is to certify that .....

(name) ..... designation being a Government servant from the State of ..... (name) was summoned to give evidence in his official capacity on behalf of the plaintiff /defendant in the above suit/matter and was in attendance in this Court from the ..... day of ..... to the day of ..... 20...., (inclusive) and that a sum of Rupees ..... has been paid into Court by the plaintiff/ defendant towards his travelling and subsistence for ..... day according to the scale prescribed by the Government of the State of ..... (name) ..... and that the said amount has been/will be remitted to the Government Treasury at ..... to be credited to Government under the head "XXI (e) (ii) Administration of Justice-Miscellaneous-other Items".Dated ..... day of ..... 20 .....Presiding Judge or Chief Ministerial Officer."[Madras].-(i) Add the following to Notice(1):-"If the document you ar summoned to produce is an entry in a letter book, or a shop-book or other account in current use, and you are desirous of receiving back the document, you may furnish along with the document a copy of the entry."(ii)The following shall be added at the bottom:-"Acknowledgment for receipt of witness batta.(Title)Received a sum of Rs.....being my travelling and other expenses and.....subsistence allowance for one day, for giving evidence in the above case.Witness".(P.Dis.No. 489/66, dated 30.11.1966).(iii)Insert the following as form No. 13-A after Form No. 13 in Appendix B of Schedule I:-"No. 13-ACERTIFICATE OF ATTENDANCE TO AN OFFICER OF GOVERNMENT SUMMONED AS A WITNESS IN A SUIT TO WHICH THE GOVERNMENT IS A PARTY[Order 16 Rule 4-A](Cause title)This is to certify that ..... (name) ..... (designation) being a servant of the Government of India/of the Government of ..... (name of State) was summoned to give evidence in his official capacity on behalf of the plaintiff/defendant in the above defendant..... and was in attendance in this Court from the ..... day of ..... to the ..... day of ..... 20 ..... (inclusive) and that a sum of Rupees ..... has been paid into Court by the plaintiff/defendant towards his travelling and subsistence allowance for ..... days according to the scale prescribed by Government of India /Government of ..... (name of State) and that the said amount has been/will be remitted to the will be Government Treasury at ..... to be credited to Government under the head "XXI-(d) Miscellaneous-Fees and Fines".Dated ..... day of ..... 20 .....Presiding Judge or Chief Ministerial Officer."

**No. 14Proclamation Requiring Attendance Of Witness**(Order 16, Rule 10)(Title)ToWhereas it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is, therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the ..... day of ..... 20 ..... at ..... o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.Given under my hand and the seal of the Court, this ..... day of ..... 20 ..... Judge.

**No. 15Proclamation Requiring Attendance Of Witness**(Order 16, Rule 10.)(Title)ToWhereas it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is, therefore, under rule 10 of

Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the day of ..... 20 at ..... o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law. Given under my hand and the seal of the Court. this . . . . . day of ..... 20 ..... Judge.

**No. 16 Warrant Of Attachment Of Property Of Witness** (Order 16, Rule 10.) (Title) To The Bailiff of the Court. Whereas the witness . . . . . cited by . . . . . has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment . . . . . property belonging to the said witness to the value of . . . . . and to submit a return, accompanied with an inventory thereof, within . . . . . days. Given under my hand and the seal of the Court, this . . . . . day of ..... 20 ..... Judge.

High Court Amendment-[Kerala].-For the word "Bailiff" the word "Amin" has been substituted-(9.6.1959).

**No. 17 Warrant Of Arrest Of Witness** (Order 16, Rule 10.) (Title) To The Bailiff of the Court. Whereas . . . . . has been duly served with a summons but has failed to attend (absconds and keeps out of the way for the purpose of avoiding service of a summons); You are hereby ordered to arrest and bring the said . . . . . before the Court. You are further ordered to return this warrant on or before the . . . . . day of 20... with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed. Given under my hand and the seal of the Court, this . . . . . day of ..... 20... Judge.

High Court Amendment-[Kerala].-For the word "Bailiff" the word "Amin" has been substituted-(9.6.1959).

**No. 18 Warrant Of Committal** (Order 16 Rule 16.) (Title) To The Officer in charge of the Jail at Whereas the plaintiff (or defendant) in the above-named suit has made application to this Court that security be taken for the appearance of . . . . . to . . . . . give evidence (or to produce a document), on the . . . . . day of ..... 20...; and whereas the Court has called upon the said . . . . . to furnish such security, which he has failed to do; This is to require you to receive the said... into your custody in the civil prison and to produce him before this Court at . . . . . on the said day and on such other day or days as may be hereafter ordered. Given under my hand and the seal of the Court, this . . . . . day of ..... 20... Judge.

**No. 19 Warrant Of Committal** (Order 16, Rule 18.) (Title) To The Officer in Charge of the Jail at Whereas, whose attendance is required before this Court in the above-named case to give evidence (or to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant), the said . . . . . cannot give such evidence (or produce such document); and whereas the Court has called upon the said . . . . . to give security for his appearance on the . . . . . day of ..... 20... , at . . . . . which he has failed to do; This is to require you to receive the said... into your custody in the civil prison and to produce him before this Court at . . . . . on the . . . . . day of ..... 20... Given under my hand and the seal of the Court, this . . . . . day of ..... 20... Judge.

High Court Amendment.-[Allahabad].-Add the following Form No. 20:-

**No. 20 Application For the Issue To a Party Or Witness** No. of Suit..... Name of parties..... In the Court of the ..... Date fixed for hearing.....



Number of witness to be summoned	Name and full address of each person to be summoned	Rank or occupation	Distance of residence from Court	Cash paid for	Name and address of person to whom unexpended travelling expenses and diet money should be returned
Rail	Road	Travelling expenses	Diet expenses		

| | | | |

## APPENDIX C

### DISCOVERY, INSPECTION AND ADMISSION **No. 1 Order for Delivery of**

**Interrogatories**(Order 11, Rule 1.)In the Court of .....Civil Suit No. .... of .....  
 20 .....A.B. ....Plaintiff,C. D. E. F. and G. H ..... Defendants.Upon hearing .....  
 .... and upon reading the affidavit of ..... filed the ..... day of .... 20 ..... It  
 is ordered that the ..... be at liberty to deliver to the .....interrogatories  
 in writing, and that the said ..... do answer the interrogatories as prescribed by Order XI,  
 rule 8, and that the costs of this application be.**No. 2Interrogatories**(Order 11, Rule 4.)(Title as in  
 No. 1, supra.)Interrogatories on behalf of the above-named [Plaintiff or defendant C.D.]for the  
 examination of the abovenamed [defendants E.F. and G. H. or plaintiff](1). Did not, etc.(2). Has not,  
 etc. .... etc., .... etc., .... etc.[The defendant E. F. is required to answer the  
 interrogatories numbered. .... ][The defendant G.H. is required to answer the  
 interrogatories numbered. .... ]**No. 3Answer To Interrogatories**(Order 11, Rule  
 9.)(Title as in No. 1, supra.)The answer of the above-named defendant E.F., to the interrogations for  
 his examination by the above-named plaintiff.In answer to the said interrogatories, I, the  
 above-named E.F., make oath and say as follow:-

1. Enter answers to interrogatories in paragraphs numbered consecutively

2.

(3). I object to answer the interrogatories numbered on the ground that [state grounds of  
 objection]**No. 4Order for Affidavit as to Documents**(Order 11, Rule 12.)(Title as in No. 1,  
 supra.)Upon hearing ..... ; It is ordered that the .... do within ..... days from the date  
 of this order, answer on affidavit stating which documents are or have been in his possession or  
 power relating to the matter in question in this suit, and that the costs of this application be.**No.**  
**5Affidavit as to Documents**(Order 11, Rule 13.)(Title as in No. 1, supra.)I, the above-named  
 defendant C. D., make oath and say as follows:-(1). I have in my possession or power the documents  
 relating to the matters in question in this suit set forth in the first and second parts of the first  
 schedule hereto.(2). I object to produce the said documents set forth in the second part of the first  
 schedule hereto [state grounds of objection](3). I have had but have not now, in my possession or  
 power the documents relating to the matters in question in this suit set forth in the second schedule

hereto.(4). The last-mentioned documents were last in my possession or power on [state when and what has become of them and in whose possession they now are].(5). Accordingly to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter memorandum, paper or writing, or any copy of or extract from any such document, or any other documents whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.**No. 6Order to Produce Documents for Inspection**(Order 11, Rule 14.)(Title as in No. 1, supra).Upon hearing ..... and upon reading the affidavit of ..... filed the day of ..... 20... It is ordered that the ... do, at all reasonable times, on reasonable notice, produce at ..... situate at ..... , the following documents, namely, ..... , and that the ..... be at liberty to inspect and persue the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings be stayed and that the costs of this application be.**No. 7Notice to Produce Documents**(Order 11. Rule 16)(Title as in No. 1, supra.)Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [plaint or written statement or affidavit, dated that ..... day of ..... 20...]. [Describe documents required.]X. Y., Pleader for theTo Z., Pleader for the.**No. 8Notice to Inspect Documents**(Order 11, Rule 17.)(Title as in No. 1. supra.)Take notice that you can inspect the documents mentioned in your notice of the ..... day of ..... 20... except the documents numbered in that notice] at [insert place of inspection] on Thursday next, ..... . the instant, between the hours of 12 and 4 o'clock.Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the ..... day of ..... 20... on the ground that [State the ground].**No. 9Notice to Admit Documents**(Order 12, Rule 3.)(Title as in No. 1, supra.)Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several document hereunder specified, and that the same may be inspected by the defendant [or plaintiff] his pleader or agent, at ..... on ..... between the hours of ..... ; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the ... last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.G.H., pleader [or agent] for plaintiff[or defendant]To E.F., pleader [or agent] for defendant [or plaintiff]. [Here describe the documents and specify as to each document whether it is original or a copy.]**No. 10Notice to Admit Facts**(Order 12, Rule 5.)(Title as in No. 1, supra.)Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.G.H. pleader [or agent] for plaintiff[or defendant].To E.F., pleader [or agent] for defendant [or plaintiff].The facts, the admission of which is required, are:-(1). That M. died on the 1st January, 1890.(2). That he died intestate.(3). That N. was his only lawful son.(4). That O. died on the 1st April, 1896.(5). That O. was never married.**No. 11Admission of Facts**

Pursuant to Notice (Order 12, Rule 5.) (Title as in No. 1, supra.) The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit: Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant or party requiring the admission]. E.F., pleader [or agent] for defendant [or plaintiff]. To G.H., pleader [or agent] for plaintiff [or defendant].

Facts admitted	Qualification or limitation, if any, subject to which they are admitted
1. That M. died on 1st January, 1890	1.....
2. That he died intestate	2.....
3. That N. was his lawful son	3. But not that he was his only lawful son.
4. That O. died	4. But not that he died on the 1st April, 1896.
5. That O. was never married.	5.....

**No. 12 Notice to Produce (General Form)** (Order 12, Rule 8.) (Title as in No. 1, supra) Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly. G.H., pleader [or agent] for plaintiff [or defendant]. To E.F., pleader [or agent] for defendant [or plaintiff].

## APPENDIX – D

**DECREE No. 1 Decree in Original Suit** (Order 20, Rule 6, 7.) (Title) Claim for ..... This suit coming on this day for final disposal before . . . . . in the presence of . . . . . for the plaintiff and of . . . . . for the defendant, it is ordered and decreed that . . . . . and that the sum of Rs. . . . . be paid by the . . . . . to the . . . . . on account of the costs of this suit, with interest thereon at the rate of . . . . . per cent, per annum from this date to date of realization. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20... Judge.

Plaintiff	Defendant		
		Rs A.P.	Rs. A.P.
1. Stamp for plaint	.....	Stamp for power	.....
2. Do. for power	.....	Do. for petition	.....
3. Do. for exhibit	.....	Pleader's fee	.....
4. Pleader's fee on Rs.	.....	Subsistence for witnesses	.....
5. Subsistence for witness	.....	Service of process	.....
6. Commissioner's fee	.....	Commissioner's fee	.....

7. Service of process .....

Total .....

Total .....

High court Amendments-[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Cancel the table under the head "Costs of suit" in Form No. 1 and substitute therefor the following:-

Plaintiff	Defendant		
		Rs. A.P.	Rs. A.P.
1. Stamp for plaint	...	1. Stamp for power	....
2. Stamp for power	...	2. Stamp for petitions and affidavits	....
3. Stamp for petitions and affidavits	...	3. Costs of exhibits including copies made under the Banker's Books Evidence Act, 1891	....
4. Costs of exhibits including copies made under the Banker's Books Evidence Act, 1891	....	4. Pleader's fee	....
5. Pleader's fee on Rs.	....	5. Subsistence and travelling allowances of witness (including those of party, if allowed by Judge)	....
6. Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge)	....	6. Process-fee	....
7. Process-fee	...	7. Commissioner's fees	....
8. Commissioner's fees	...	8. Demi-paper	....
9. Demi-paper	...	9. Costs of transmission of records	....
10. Costs of transmission of records	...	10. Other costs allowed under the Code and General Rules and Orders	....
11. Other costs allowed under the Code and General Rules and Orders	....	11. Adjournment costs not paid in cash (to be deducted or added as the case may be)	....
12. Adjournment costs not paid in cash (to be deducted or added as the case may be)			

Total	...	Total	...
[Gauhati].-Same as that of Calcutta.[Madras].-In Form No. 1 of Appendix D, for the existing tabular statement, the following tabular statement shall be substituted, namely:-"Cost of suit			
Plaintiff	Defendant		
	Rs. P.		Rs. P.

1.Stamp on plaint	...	1.Stamp on written statement	...
2.Stamp on vakalat	...	2.Stamp on vakalat	...
3.Fee for services of process	...	3.Fee for service of process	...
4.Fee for preparation of process	...	4.Fee for preparation of process	...
5.Cost of pre-suit notice	...	5.Cost of pre-suit reply notice	...
6.Stamp on exhibits	...	6.Stamp on exhibits	...
7.Cost of making or getting copies of pleadings, application or affidavits	...	7.Cost of making or getting copies of pleadings, applications or affidavits	...
8.Cost of obtaining copies of public documents, including search fee	...	8.Cost of obtaining copies of public documents, including search fee	...
9.Travelling allowance and subsistence	....	9.Travelling allowance and subsistence for witnesses	...
10.Cost of any adjournment	....	10.Cost of any adjournment	...
11.Cost of interlocutory applications or petitions	...	11.Cost of interlocutory applications or petitions	...
12.Commissioner's fee	...	12.Commissioner's fee	...
13.Pleader's fee on Rs.	...	13.Pleader's fee on Rs.	...

Total	...	Total	...
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Orissa.-Same as that of Patna.Patna.-In Form No. 1 for the schedule of "Costs of suit" substitute the following:-

Plaintiff	Amount	Defendant	Amount
	Rs. A.P.		Rs. A.P.
1.Stamp for plaint	...	1.Stamp for power	...
2.Do. for power	...	2.Do. for petition or affidavit	...
3.Do. for petition or affidavit	...	3.Costs for exhibits	...
4.Costs for exhibits	...	4.Pleader's fee	...
5.Pleader's fee on Rs.	...	5.Subsistence(a)For plaintiff or	...

		his agent(b)For witnesses	
6.Subsistence-(a)for defendant or his agent(b)for witnesses		6.Commissioner's fee	
7.Commissioner's fee	...	7.Service of process	...
8.Service for process	...	8.Copying or typing charge	...
9.Copying or typing charge	...		
Total		Total	
...		...	

**No. 2Simple Money Decree**(Section 34)(Title)Claim for.....This suit coming on this ..... day for final disposal before ..... in the presence of ..... for the plaintiff and of ..... for the defendant; It is ordered that the .....do pay to the ..... the sum of Rs. .... with interest thereon at the rate of ..... per cent per annum from ..... to the date of realization of the said sum and do also pay Rs.... , the cost of this suit, with interest thereon at the rate of ..... per cent per annum from this date to the date of realization.Given under my hand and the seal of the Court, this ..... day .... of .... 20 .. Judge.

Plaintiff	Defendant		
		Rs A.P.	Rs. A.P.
1.Stamp for plaint	.....	Stamp for power	.....
2.Do. for power	.....	Do. for petition	.....
3.Do. for exhibit	.....	Pleader's fee	.....
4.Pleader's fee on Rs.	.....	Subsistence for witnesses	.....
5.Subsistence for witness	.....	Service of process	.....
6.Commissioner's fee	.....	Commissioner's fee	.....
7.Service of process	.....		
Total		Total	
.....		.....	

High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Same as in Form No. 1, supra.[Gauhati].-Same as that of Calcutta.[Madras].-Same as in Form No. 1, supra**No.**

**3Preliminary Decree for Foreclosure**Order 34, Rule 2]Where accounts are directed to be taken.)(Title)This suit coming on this ..... day, etc.; It is hereby ordered and decreed that it be referred to ..... as this Commissioner to take the accounts following:-(i)an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);(ii)an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;(iii)an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon(such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent, per annum);(iv)an account of any loss or damage caused to

the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.(2)And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.(3)And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the . . . . day of . . . . . and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.(4)And it is hereby further ordered and decreed-(i)that the defendant do pay into Court on or before the . . . . .day of . . . . . , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.....for the costs of the suit awarded to the plaintiff.(ii)that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.(5)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit./**SCHEDULEDescription of the mortgaged property**High Court Amendment-[Kerala].-Delete Form No. 3 [Noti. No. DI-22480/85, dated 20.11.1990].**No. 3A**Preliminary Decree for Foreclosure[Order 34, Rule 2](Where the Court declares the amount due.)(Title)This suit coming on this.....day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this.....day of.....is the sum of Rs.....for principal, the sum of Rs.....for interest on the said principal, the sum of Rs.....for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs. ....for the costs of this suit awarded to the plaintiff, making in all sum of Rs.....(2)And it is hereby ordered and decreed as follows:-(i)that the defendant do pay into Court on or before for.....day of.....or any later date up to which time for payment may be extended by the Court of the said sum of

Rs.....;(ii)that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decreed that, in default if payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit./**SCHEDULEDescription of the mortgaged property**High Court

Amendment-[Kerala].-Delete Form No. 3-A [Noti. No. DI-22480/85, dated 20.11.1990].No. 4Final Decree for Foreclosusre(Order 34, Rule 3.)(Title)Upon reading the preliminary decree in this suit on the.....day of.....and further orders (if any) dated the.....day of.....and the application of the plaintiff dated the.....day of.....for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders had not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage;It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; Words not required to be deleted.(2)And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.High Court Amendment-[Kerala].-For Form no. 4 substitute the following:-No.

4**DECREE FOR FORECLOSURE**Order 34, Rule 2(Title)This suit coming on this ..... day, etc., it is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this ..... day of ..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs ..... for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon and the sum of Rs ..... for the costs of this suit awarded to the plaintiff, making in all the sum of Rs .....(2)And it is hereby ordered and decreed as follows:(i)that the defendant to pay into Court on or before the day of ..... or any later date up to which time for payment may be extended by the Court of the said sum of Rs .....(ii)that, on such payment and on payment thereafter before such date as the Court may fix, or such amount, with interest if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents, in his possession or power relating to the mortgaged



property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property described in the schedule annexed hereto \*[and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property] and that the whole of the liability whatsoever of the defendant up to the date mentioned in (2)(i) arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished./SCHEDULEDescription of the mortgaged property [Noti. No. D1-22480/85, dated 20-11-1990].\*Words not required to be deleted.No. 5Preliminary Decree for Sale[Order 34, Rule 4-Where accounts are directed to be taken](Title)This suit coming on this.....day, etc.; It is hereby ordered and decree that it be referred to as the Commissioner to take the accounts following:-(i)an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent, per annum or at such rate as the Court deems reasonable);(ii)an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been received;(iii)an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon(such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);(iv)an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.(2)And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.(3)And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of....., and that upon report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.(4)And it is hereby further order and decreed-(i)that the defendant do pay into Court on or before the.....day of.....or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.....for the costs of the suit awarded to the plaintiff;(ii)that on such payment and on payment thereafter before such date as the Court

may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.(5)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.(6)And it is hereby further order and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.(7)And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient or payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks

fit./**SCHEDULEDescription of the mortgaged property**High Court

Amendment-[Kerala].-Delete Form No. 5 [Noti. No. 5 DI-22480/85, dated 20.11.1990].No.

5-APreliminary Decree for Sale(Order 34, Rule 4,-When the Court declares the amount

date.)(Title)This suit coming on this. ....day etc; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this. ....day of. ....

.....is the sum of Rs. .... for principal, the sum of Rs. .... for interest on the said principal, the sum of Rs. .... for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs. .... for the costs of the suit awarded to the plaintiff, making in

all the sum of Rs.(2)And it is hereby ordered and decreed as follows:-(i)that the defendant do pay into Court on or before the. ....day of. .... or any later date up to which time for payment may be extended by the Court, the said sum of Rs. ....; (ii)that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such cost, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into

Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so-required deliver up to the defendant quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged-property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.(4)And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction herefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.(5)And it is hereby further ordered and decreed that, if the money realised by such sale such not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

**DESCRIPTION OF THE MORTGAGED PROPERTY No. 6**High Court Amendment-[Kerala].-Delete Form No. 5-A [Noti. No. DI-22480/85, dated 20.11.1990].No. 6Final Decree for Sale(Order 34, Rule 5)(Title)Upon reading the preliminary decree passed in this suit on the. . . . . day of. . . . . and further orders(if any) dated the. . . . .day of. . . . .and the application of the plaintiff dated the. . . . . day of.. . . .for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage;It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.(2)And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.High Court Amendment-[Kerala].-For Form No. 6 substitute the following

namely:-**No.6DECREE FOR SALE**(Order 34, Rule 3)(Title)This suit coming on this ..... day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this ..... day of ..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs ..... for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs ..... for the costs of the suit awarded to the plaintiff, making in all the sum of Rs .....(2)And it is hereby ordered and decreed as follows:(i)that the defendant do pay into Court on or before the day of ..... or any later date up to which time for payment may be extended by the Court, the said sum of Rs .....(ii)that, on such payment and on payment thereafter before such date as the Court may fix, of such amount, with interest, if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the mortgaged property described in the schedule annexed hereto or a sufficient part thereof be sold, and that for the purpose of such sale, the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.(4)And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deducting therefrom the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and in payment of any amount, with interest, if any, which the Court may have adjudged due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.(5)And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the balance, if legally recoverable from the defendant otherwise than out of the property sold, be paid by the defendant personally./SCHEDULEDescription of the mortgaged property [Noti. No. D1-22480/85, dated 20-11-1990].**No. 7Preliminary Decree for Redemption where on Default of Payment by Mortgagor a Decree for Foreclosure is Passed**(Order 34, Rule 7.-Where accounts are directed to be taken.)(Title)This suit coming on this. . . . . day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the account following:-(i)an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);(ii)an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;(iii)an account of all sums of money properly incurred by the defendant

up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as it payable on the principal, or, failing both such rate, at nine per cent per annum);(iv)an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the term of the mortgage-deed.(2)It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgagemoney, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.(3)And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the. . . . .day of. . . . . and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.(4)And it is hereby further ordered and decreed-(i)that the plaintiff to pay into Court on or before the. . . . . day of. . . . . , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. . . . . .for the costs of the suit awarded to the defendant;(ii)that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.(5)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit./**SCHEDULEDescription of the mortgaged property**High Court Amendment-[Kerala].-Delete Form No. 7 [Noti. No. DI-22480/85, dated 20.11.1990].No. 7-A Preliminary Decree for Redemption where on Default of Payment by Mortgagor a Decree for Sale is Passed (Order 34, Rule 7.-Where accounts are directed to be taken.)(Tile)This suit coming on this . . . . . day, etc.; It is hereby ordered and decreed that it be referred to . . . . . as the Commissioner to take the accounts following:-(i)an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be

computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);(ii)an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;(iii)an account of all sums of money property incurred by the defendant upto this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon(such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum);(iv)an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgaged-deed.(2)And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.(3)And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the. . . . . day of. . . . .and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.(4)And it is hereby further ordered and decreed-(i)that the plaintiff do pay into Court on or before the. . . . . .day. . . . .of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. . . . . . for the costs of the suit awarded to the defendant;(ii)that, or such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom the claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.(5)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purpose of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.(6)And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the

Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.(7)And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty(where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit./

**SCHEDULEDescription of the mortgaged property**High Court Amendment-[Kerala].-Delete Form No. 7-A [Noti No. DI-22480/85, dated 20.11.1990].No. 7-BPreliminary Decree for Redemption where on Default of Payment by Mortgagor a Decree for Foreclosure is Passed(Order 34, Rule 7.-Where the Court declares the amount due.)(Title)This suit coming on this. .... day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this. .... day of. ... is the sum of Rs. ....for principal, the sum of Rs. ....for interest on the said principal the sum of Rs. ....for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon,203 and the sum of Rs. ....for the costs of the suit awarded to the defendant, making in all the sum of Rs.(2)And it is hereby ordered and decreed as follows:-(i)that the plaintiff do pay into Court on or before the .... day of. ...., or any later date up to which time for payment may be extended by the Court the said sum of Rs. ....;(ii)that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such cost of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decrees that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit./

**SCHEDULEDescription of the mortgaged property**High Court Amendment-[Kerala].-Delete Form No. 7-B [Noti. No. DI-22480/85, dated 20.11.1990].No. 7-CPreliminary Decree for Redemption where on Default of Payment by Mortgagor a Decree for Sale is Passed(Order 34, rule 7.-Where the Court declares the amount due.)(Title)This suit coming on this. .... day, etc., It is hereby declared that the amount due to the defendant on the

mortgage mentioned in the plaint calculated up to this. .... day of. .... is the sum of Rs. ....for principal, the sum of Rs. ....for interest on the said principal, the sum of Rs. ....for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of mortgage-security together with interest thereon, and the sum of Rs. ....for the cost of this suit awarded to the defendant, making in all the sum of Rs.(2)And it is hereby ordered and decreed as follows:-(i)that the plaintiff do pay into Court on or before the. .... day of. .... or any later date up to which time the payment may be extended by the Court the said sum of Rs. .... ;(ii)that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or such person as he appoints, and the defendant shall, if so required, reconvey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.(4)And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.(5)And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty(where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks

fit./**SCHEDULEDescription of the mortgaged property**High Court

Amendment-[Kerala].-Delete Form No. 7-C [Noti. No. DI-22480/85, dated 20.11.1990].No.

7-DFinal Decree for Foreclosure in a Redemption Suit on Default of Payment by Mortgagor(Order 34, Rule 8.)(Title)Upon reading the preliminary decree in this suit on the. .... day of. .... and further orders (if any) dated the. .... day of. .... , and the application of the defendant dated the. .... day of. .... for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person



entitled to redeem the mortgage ;It is hereby ordered and decreed that the plaintiff and all person claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned [and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property] [Words not required to be deleted.](2)And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharge and extinguished.\*Words not required to be deleted.No. 7-DDECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED(Order 34, Rule 4)(Title)This suit coming on this ..... day, etc., It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated upto this ..... day of ..... is the sum of Rs. .... for principal, the sum of Rs. .... for interest on the said principal, the sum of Rs. .... for costs, charges and expenses (Other than the costs of the suit) properly incurred by the defendant in respect of the mortgage security together with interest thereon, and the sum of Rs. .... for the costs of the suit awarded to the defendant, making in all the sum of Rs. ....(2)And it is hereby ordered and decreed as follows:(i)that the plaintiff do pay into Court on or before the day of ..... or any later date upto which time for payment may be extended by the Court the said sum of Rs. ....(ii)that on such payment and on payment thereafter, before such date as the Court may fix, of such amount, with interest, if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the defendant or any person claiming under him or any person under dvhom he claims and from all liability whatsoever arising from the mortgage or from this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.(3)And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of, and in the property described in the schedule annexed hereto\*and (if the plaintiff be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property; and that the whole of the liability whatsoever of the plaintiff upto the date mentioned in (2)(i) arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished./SCHEDULE(Description of the Mortgaged property) [Noti. No. D1-22480/85, dated 20-11-1990].\*Words not required to be deleted.No. 7-EFinal Decree for Sale in a Redemption on Suit on Default of Payment by Mortgagor(Order 34, Rule 8)(Title)Upon reading the preliminary decree passed in this suit on the. ....day of. ....and further order (if any) dated the. ....day of. ...., and the application of the defendant dated the. .... day of. ....for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf

or any other person entitled to redeem the mortgage; It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property. (2) And it is hereby ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other person entitled to receive the same.

**High Court Amendment-[Kerala].-For Form No. 7-E substitute the following:-**

**NO. 7-E DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED**

Order 34, Rule 4 (Title) This suit coming on this ..... day, etc. It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated upto this day of ..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs ..... for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs ..... for the costs of this suit awarded to the defendant, making in all the sum of Rs ..... (2) And it is hereby ordered, and decreed as follows: (i) that the plaintiff do pay into Court-on or before the day of plaint or any later date upto which time for payment may be extended by the Court the said sum of Rs ..... (ii) that, on such payment and on payment thereafter, before such date as the Court may fix of such amount with interest, if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents, shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all encumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property. (3) And it is hereby further ordered and decreed that, in default of payment as aforesaid, the mortgaged property described in the Schedule annexed hereto or a sufficient part thereof be sold, and that for the purpose of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property. (4) And it is hereby further ordered and decreed that, the money realised by such sale be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may have been passed in this suit and in payment of any amount, with interest, if any, which the Court may have adjudged due to the defendant for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under Rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any,

shall be paid to the plaintiff or other persons entitled to receive the same.(5)And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as, aforesaid, the balance, if legally recoverable from the plaintiff otherwise than out of the property sold, be paid by the plaintiff personally./SCHEDULE(Description of the mortgaged property) [Noti. No. D1-22480/85, dated 20-11-1990].\*Words not required to be deleted.No. 7-FFinal Decree in a Suit for Foreclosure, Sale or Redemption where the Mortgagor Pays the Amount of the Decree(Order 34, Rules 3, 5 and 8)(Title)This suit coming on this. . . . . day for further consideration and it appearing that on the . . . . . day of. . . . . the mortgagor or. . . . ., the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the. . . . . day of. . . . . ; It is hereby ordered and decreed that:-(i)the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor [or, as the case may be,. . . . . who has redeemed the property] [Words not required to be deleted.] or an acknowledgment of the payment of the amount due in his favour;(ii)the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of re-conveyance or acknowledgment in the manner aforesaid,-(i)the said sum of Rs. . . . . be paid out of Court to the mortgagee;(ii)the said deeds and documents brought into the Court be delivered out of Court to the mortgagor [or the person making the payment] [Words not required to be deleted.] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor [or other person making the payment] [Words not required to be deleted.], the said deed of re-conveyance or the acknowledgment in the officer of the Sub-registrar of. . . . . ; and(iii)[if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] [Words not required to be deleted.] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor [or such person as aforesaid who has made the payment.] [Words not required to be deleted.]\*Words not required to be deleted.High Court Amendment.-[Kerala].-Delete Form no. 7-F [Noti. No. DI-22480/85, dated 20.11.1990].No. 8Decree against Mortgagor Personally for Balance after the Sale of the Mortgaged Property(Order 34, Rules 6 and 8A)(Title)Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the. . . . . day of. . . . . and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. . . . . . . . . . . and have been paid to the applicant out of the Court on the day of. . . . . and that the balance now due to him under the aforesaid decree of Rs. . . . . ;And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;It is hereby ordered and decreed as follows:-That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. . . . . with further interest at the rate of six per cent per annum from the. . . . . day of. . . . . (the date of payment out of Court referred to above) up to the date of realisation of the said sum, and the costs of this application.High Court Amendment-[Kerala].-Delete Form No. 8 [Noti. No. Di-22480/85, dated 20.11.1990].**No. 9Preliminary Decree for Foreclousre of Sale**[Plaintiff 1st Mortgagee,vs.Defendant No. 1 Mortgagor,Defendant No. 2 2nd Mortgagee.](Order 34, Rules 2 and 4)(Title)The suit coming on this . . . . . day, etc; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this

day of. . . . . is the sum of Rs. . . . . for principal, the sum of Rs. . . . for interest on the said principal, the sum of Rs. . . . . for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs. . . . . for the costs of this suit awarded to the plaintiff, making in all the sum of Rs. . . . . (Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.) (2) It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively;-] [Words not required to be deleted.] (3) And it is hereby ordered and decreed as follows:-(i)(a) that defendants or one of them do pay into Court on or before the day of . . . . . or any later date up to which time for payment has been extended by the Court the said sum of Rs. . . . . due to the plaintiff; and (b) that defendant No. 1 do pay into Court on or before the day of . . . . . or any later date up to which time for payment has been extended by the Court the said sum of Rs. . . . . due to defendant No. 2; and (ii) that, on payment of the sum declared to be due to the plaintiff by defendant or either of them in the manner prescribed in clause (i)(a) and on payment thereafter before such date as the Court may fix and such expenses as may be payable under rule 10, together with such subsequent interest as may be payable shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and shall all such documents shall be delivered over to the defendant No. . . . . (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgagee and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. . . . (who has made the payment) quiet and peaceable possession of the said property. (Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.) (4) And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree-(i) [in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or (ii) [in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and (iii) [in the case where a sale is ordered under clause (4) (ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any,

shall be applied in payment of the amount due to defendant No. 2, and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively. (5) And it is hereby further ordered and decreed—(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the plaintiff might have done under clause 4 above)—(i) [that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] [Words not required to be deleted.] or (ii) [that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] [Words not required to be deleted.] and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished. (6) And it is hereby further ordered and decreed [in the case where a sale is ordered under clause 5 above] [Words not required to be deleted.]—(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 1, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against No. 1 for the amount of the balance. (7) And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

**/SCHEDULE Description of the mortgaged property\*** Words not required to be deleted. High Court Amendment—[Kerala].—For Form No. 9 substitute the following:—**No. 9 DECREE FOR FORECLOSURE OR SALE** Plaintiff ... 1st Mortgagee vs. Defendant No. 1 ... Mortgagor Defendant No. 2 ... 2nd Mortgagee (order XXXIV Rule 2 and 3) (Title) The suit coming on this ..... day, etc. it is hereby declared that the amount due to the plaintiff on the mortgage

mentioned in the plaint calculated up to this ..... day of ..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs ..... for costs, charges and expenses other than the costs of the suit incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs ..... for the costs of the suit awarded to the plaintiff, making in all the sum of Rs .....(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage money due thereunder has become payable at the date of the suit.)(2)It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 or \* (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:(3)And it is hereby ordered and decreed as follows:(i)(a)that the defendants or one of them do pay into Court on or before the ..... day of ..... for any later date upto which time or payment has been extended by the Court the said sum of Rs ..... due to the plaintiff; and(b)that defendant No. 1 do pay into Court on or before the ..... day of ..... or any later date upto which time for payment has been extended by the Court the said sum of Rs ..... due to defendant No. 2; and(ii)that, on payment of the sum declared to be due to the plaintiff by defendant or either of them in the manner prescribed in clause (i)(a) and on payment thereafter, before such date as the Court may fix of such amount, with interest, if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents, shall be delivered over to the defendant No ..... (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No ..... (who has made the payment) quiet and peaceable possession of the said property.(Similar declaration to be introduced if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)(4)And it is hereby ordered and decreed that, in default of payment as aforesaid, of the amount due to the plaintiff:\*(i) (in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale) that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property, or\*(ii) (in the case of any other mortgage) that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and\*(iii) (in cases where a sale is ordered under clause 4 (ii) above) that the money realised by such sale shall be paid into Court and be duly applied (after deducting therefrom the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed after decree and in payment of the amount, with interest, if any, which the Court may have adjudged due to the plaintiff in respect of such costs of

this suit and such costs, charges and expenses as may be payable under rule 7 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any further balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due to the plaintiff and defendant No. 2, the balance if legally recoverable from defendant No. 1 otherwise than out of the property sold, be paid by defendant No. 1 personally to the plaintiff or defendant No. 2 or both of them, as the case may be. (5) And it is hereby further ordered and decreed: (a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be entitled to keep the plaintiff's mortgage alive for his benefit, and he shall be entitled to benefits similar to those conferred upon the plaintiff as per clause 4 above\* (i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property; or\* (ii) that the mortgaged property or a sufficient part thereof be sold and that for the purpose of such sale defendant No. 2 shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property; and (b)\* (in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished. (6) And it is hereby further ordered and decreed\* (in the case where a sale is ordered under Clause 5 above). (i) that the money realised by such sale shall be paid into Court and be duly applied (after deducting therefrom the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith, and that the balance if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed after decree and in payment of the amount, with interest if any, which the Court may have adjudged due in respect of such costs of the suit and such costs, charges and expenses as may be payable to defendant No. 2 under Rule 7 of Order XXXIV of the First Schedule to the Code of the Civil Procedure, 1908, and that the further balance if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, the balance, if legally recoverable from defendant No. 1, otherwise than out of the property sold, be paid by defendant No. 1, personally to defendant No. 2. / **SCHEDULE Description of the mortgaged property** [Noti. No. D1-22480/85, dated 20-11-1990]. \*Words not required to be deleted. **No. 10 Preliminary Decree for Redemption of Prior Mortgage and Foreclosure of Sale on Subsequent Mortgage** [Plaintiff Mortgagor, vs. Defendant No. 1 Mortgagor Defendant No. 2 1st Mortgagee] (Order 34, rules 2, 4 and 7) (Title) The suit coming on this. . . . . day, etc; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this. . . . . day of. . . . . is the sum of Rs. . . . . . for principal, the sum of Rs. . . . . . for interest on the said principal, the sum of Rs. . . . . . for costs, charges and expenses (other than the costs of the suit) property incurred by defendant No. 2 in respect of the mortgage security with interest thereon and the sum of

Rs. . . for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)(2)It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:-] [Words not required to be deleted.].(3)And it is hereby ordered and decreed as follows:-(i)(a)that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the. . . . . day of. . . . . or any later date up to which time for payment has been extended by the Court the said sum of Rs. . . . . due to defendant No. 2; and(b)that defendant No. 1 do pay into Court on or before the. . . . . day of. . . . . or any later date up to which time for payment has been extended by the Court the said sum of. Rs. . . . . due to the plaintiff; and(ii)that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, or Order 34 of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1(whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)(4)And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree-(i)[[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale] [Words not required to be deleted.] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall; if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or(ii)[[in the case of any other mortgage] [Words not required to be deleted.] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and(iii)[[in the case where a sale is ordered under clause 4(ii) above] [Words not required to be deleted.] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such



subsequent interest as may be payable under rule 11, or Order 34 of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively. (5) And it is hereby further ordered and decreed, - (a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (in the same manner as the defendant No. 2 might have done under clause 4 above) - (i) [that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property] [Words not required to be deleted.]; or (ii) [that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgage property;] [Words not required to be deleted.] and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished. (6) And it is hereby further ordered and decreed (in the case where a sale is ordered under clause 5 above) - (i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance. (7) And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit. / **SCHEDULE Description of the mortgaged property** High Court Amendments - [Andhra Pradesh]. - Same as that of Madras. [Kerala]. - For Form No. 10 substitute the following: - \*Words not required to be deleted. **No. 10 DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE** Plaintiff

2nd Mortgagee vs. Defendant No. 1 Mortgagor Defendant No. 2 1st Mortgagee (Order 34, Rule 2, 3 and 4) (Title) The suit coming on this ..... day, etc., it is hereby declared that the amount due to defendant No. 2 on the mortgage in the plaint calculated up to this ..... day of ..... is the sum of Rs. .... for principal, the sum of Rs. .... for interest on the said principal, the sum of Rs. .... for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage security with interest thereon and the sum of Rs. .... for the costs of this suit awarded to defendant No. 2 making in all the sum of Rs. .... (Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit). (2) It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority, to the plaintiff \* [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively;] (3) And it is hereby ordered and decreed as follows: (i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the ..... day of ..... or any later date upto which time for payment has been extended by the Court the said sum of Rs. .... due to defendant No. 2, and (b) that defendant No. 1 do pay into Court on or before the ..... day of ..... or any later date upto which time for payment has been extended by the Court the said sum of Rs. .... due to the plaintiff; and (ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter, before such date as the Court may fix of such amount, with interest, if any, as the court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment) or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver upto the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property. (Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage). (4) And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2. (i) (in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale) that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or (ii) (in the case of any other mortgage) that the mortgaged property or a sufficient part thereof shall be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property; and (iii) [in the case where a sale is

ordered under clause 4(ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deducting therefrom the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may have been passed after decree and in payment of the amount with interest, if any, which the Court may have adjudged due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to the plaintiff, and that, if any further balance be left, it shall be paid to defendant No. 1 or other person entitled to receive the same; and (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, the balance, if legally recoverable otherwise than out of the property sold, be personally paid by defendant No. 1 to defendant No. 2 or the plaintiff or both of them, as the case may be. (5) And it is hereby further ordered and decreed: (a) that if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be entitled to keep defendant No. 2's mortgage alive for his benefit and he shall be entitled to benefits similar to those conferred upon defendant No. 2 as per clause 4 above. (i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property;] or (ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] and (b) (in the case of mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage and from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished. (6) And it is hereby further ordered and decreed (in the case where a sale is ordered under clause 5 above) - (i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith, and that the balance, if any, shall then be applied on payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount, with interest if any, which the Court may have adjudged due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 7 of Order 34 of the First Schedule of the Code of Civil Procedure, 1908, and that the further balance if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and (i) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, the balance, if legally recoverable otherwise than out of the property sold, be personally paid by defendant No. 1 to defendant No. 2. /SCHEDULE (Description of the mortgaged property) [Noti. No. D1-22480/85, dated 20-11-1990]. \*Words not required to be deleted. [Madras]. - Insert the following as Forms Nos. 10-a and 10-B: - **"No. 10-A FINAL DECREE FOR SALE** [Order 34 Rule 5(2), or Order 34 Rule 8(4)] (Title) Upon reading the preliminary decree passed in the above suit and the application of the plaintiff/defendant dated ..... and upon hearing Mr ..... for plaintiff and Mr ..... for

defendant and it appearing that the payment directed by the said decree has not been made: It is hereby directed as follows: (i) that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after defraying there out the expenses of the sale) be applied in payment of what is declared due to the plaintiff/defendant in the aforesaid preliminary decree together with subsequent interest and subsequent costs and that the balance, if any, be paid to the defendant or other person entitled to receive it: (ii) that if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full the Plaintiff/defendant be at liberty to apply for a personal decree for the amount of the balance; and defendant (iii) that the defendant/plaintiff do also pay plaintiff/defendant Rs ..... for the cost of this application. [Here enter description of mortgaged property in English, or in the language of the Court.] Notes:-(1) In the case of a decree under Order 34, rule 5(2) score out the words "plaintiff" and "defendant" below the lines and in the case of a decree under Order 34, rule 8(4), score out the same words occurring above the lines. (2) Direction No. (2) should be struck out if the personal liability has not been adjudicated in the suit or has been declared null and void. **No. 10-B FINAL DECREE FOR REDEMPTION** [Order 34 Rule 3(1), Order 34 Rule 5(1) and Order 34 Rule 8(1)] (Title) Upon reading the preliminary decree in the above suit on ..... and the application of the plaintiff/defendant I.A. No. dated ..... and after hearing Mr. pleader for the ..... and Mr. .... pleader for the ..... and it appearing that the payment directed by the aforesaid decree has been made: It is hereby decreed as follows: That the plaintiff/defendant to deliver up to the defendant/plaintiff or to such person as he appoints all documents in his possession or power relating to the mortgaged property and do also re-transfer the property to the defendant/plaintiff from the mortgage and from all encumbrances created by the plaintiff/defendant or any person claiming under him (or by those under whom he claims) and do also put the defendant/plaintiff in possession of the property. / **SCHEDULE Description of the mortgaged property** The cost of the defendant/plaintiff in this proceeding: Particulars

..... Amount

..... Notes:-(1) In the case of a decree under Order 34, rule 8(1), score out the words "plaintiff" and "defendant" above the lines; in the case of decrees under Order 34, rule 3(1) and rule 5(1), score out the words "plaintiff" and "defendant" below the lines. (2) The words "or by those under whom he claims" will be inserted only if the mortgage derives title from an original mortgagee. **No. 11 Preliminary Decree for Sale Plaintiff Sub or derivative mortgage** vs. Defendant No. 1 Mortgagor, Defendant No. 2 Original Mortgagee. [(Order 34, Rule 4)] (Title) This suit coming on this. .... day, etc; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this. .... day of. .... is the sum of Rs. ... for principal, the sum of Rs. .... for interest on the said principal, the sum of Rs. .... for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. .... for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs. .... (Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.) (2) And it is hereby ordered and decreed as follows:-(i) that defendant No. 1 do pay into Court on or before the said. .... day of. .... or any later date of up to which time for payment may be extended by the Court the said sum of Rs. .... due to defendant No. 2; (Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.) (ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in

the manner prescribed in clause 2(i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, or Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, reconvey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and (iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2 the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interests as may be payable under rule 11, of Order 34 of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance. (3) And it is further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)-(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder). (4) And it is hereby further ordered and decreed that, in default of payment by defendant Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property. (5) And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same. (6) And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2, or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance. (7) And it is hereby further ordered and decreed that, if defendant No. 2 pays

into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder).(8)And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit./SCHEDULE

**Description of the mortgaged property**High Court Amendment-[Kerala].-For Form No. 11 substitute the following:-**No.11DECREE FOR SALE**Plaintiff Sub or Derivative MortgageevsDefendant No. 1 MortgagorDefendant No. 2 Original Mortgagee(Order 34, Rule 3)(Title)The suit coming on this ..... day, etc., it is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this .....4..... day of ..... is the sum of Rs..... for principal, the sum of Rs ..... for interest on the said principal, the sum of Rs..... for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon and the sum of Rs ..... for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs .....(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.)(2)And it is hereby ordered and decreed as follows:(i)that defendant No. 1 do pay into Court on or before the said ..... day of ..... or any later date upto which time for payment may be extended by the Court the said sum of Rs ..... due to defendant No. 2.(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount).(ii)that on payment of the sum declared due to defendant No. 2 by defendant No.1 in the manner prescribed in clause 2(i) and on payment thereafter, before such date as the Court may fix, of such amount, with interest, if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as maybe payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all encumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and(iii)that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2 the sum declared due to the plaintiff together with subsequent costs of the suit and other costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, be paid to him, and that the balance, if any, shall then be paid to defendant No. 2 and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the balance, if legally recoverable otherwise than out of the property sold, be personally paid by defendant No. 2 to the plaintiff.(3)And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all

documents, etc. [as in sub clause (ii) of Clause 2.](4)And it is hereby further ordered and decreed that, in default of payment by defendant Nos. 1 and 2 as aforesaid, the mortgaged property or a sufficient part thereof shall be directed to be sold and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.(5)And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deducting therefrom the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause (i) of para 2 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule of the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2, and that, if any further balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.(6)And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the balance, if legally recoverable otherwise than out of the property sold, be personally paid by defendant No. 2 or defendant No. 1 (as the case may be) to the plaintiff or defendant No. 2 or both of them as the case may be.(7)And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2.\* (i) (in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale) that the defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to defendant No. 2 quiet and peaceable possession of the said property; or\*(ii) (in the case of any other mortgage) that the mortgaged property or a sufficient part thereof shall be sold; and that for the purpose of such sale defendant No. 2 shall produce before the Court of such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and\*(iii) [in the case where a sale is ordered under Clause 7(ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deducting therefrom the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed after decree and in payment of the amount, with interest, if any, which the Court may have adjudged due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 7 of Order 34 of the First Schedule to the Code of Civil Procedure, 1908, and the balance, if any, shall be applied in payment of the amount due to the plaintiff, and that, if any balance be left, it shall be paid to defendant No.1 or other persons entitled to receive the same; and(iv)that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 the balance, if legally recoverable otherwise than out of the property sold, be personally paid by defendant No.1 to defendant No. 2./SCHEDULE(Description of the mortgaged property) [Noti. No, DI-22480/85, dated 20-11-1990].\*Words not required to be deleted.**No. 12Decree for Rectification of Instrument**(Title)It is hereby declared that the. . . . ., dated the. . . . . day of. . . . . 20. . . . ., does not truly express the intention of the parties to suchAnd it is decreed that the said. . . . . rectified by....**No. 13DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS**(Title)It is hereby declared that the. . . . ., . . . . . dated the. . . . . day of. . . . .20. . . . ., and made between and. . . . . is void as against the plaintiff and all other the creditors, if any, of the defendant**No. 14Injunction Against Private**

**Nuisance**(Title)Let the defendant. . . . . , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint a belonging to and being occupied by the plaintiff.**No. 15Injunction against Building Higher than Old Level**(Title)Let the defendant. . . . . , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in. . . . . any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down,so or in such manner as to darken, injure or obstruct such of the plaintiffs windows in his said premises as are ancient lights.**Preliminary Decree in an Administration-Suit**(Title)It is ordered that the following accounts and inquiries be taken and made; that is to say-In creditor's suit-(1)That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.In suits by legatees-(2)That an accounts be taken of the legacies given by the testator's will,In suits by next-of-kin-(3)That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.](4)An account of the funeral and testamentary expenses.(5)An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.(6)An inquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.(7)And it is further ordered that the defendant do, on or before the. . . . . day of. . . . . next, pay into, Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.(8)And that if the. . . . . shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased that the same be sold accordingly, and the proceeds paid into Court.(9)And that Mr. E.F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the. . . . . 1(and shall give security by bond for the due performance of his duties to the amount. . . . . .rupees)(10)And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say-(a)an inquiry what immovable property the deceased was seized of or entitled to at the time of his death;(b)an inquiry what are the incumbrances (if any) affecting the immovable property of the deceased or any part thereof;(c)an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.(11)And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.(12)And it is ordered that G.H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contacts of sale subject to the approval of the [. . . . .] [Here insert name of proper officer.] and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge



to settle.(13)And it is further ordered that, for the purpose of the inquiries hereinbefore directed, . . the . . . . . 1.shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the . . . . . 1to give the most useful publicity to such inquiries.(14)And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of . . . . . and that the . . . . . 1do certify the result of the injuries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of(15)And, lastly, it is ordered that this suit [or proceedings] stand adjourned for making final decree to the day of .....[Such part only of this decree is to be used as is applicable to the particular case.]\*Here insert name of proper officer.**No. 18Final Decree in an Administration-Suit by a Legatee**(Title)1. It is ordered that the defendant. . .do, on or before the. . . . . day of. . . . . , pay into Court the sum of Rs. . . . . , the balance by the said certificate found to be due from the said defendant on account of the estate of. . . . . , the testator and also the sum of Rs. . . . . for interest, at the rate of Rs. . . . . per cent per annum, from the. . .day of. . . . . to the. . .day of. . . , amounting together to the sum of Rs. . . . . .(2)Let the. . . . . 1 of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. . . . . . ordered to be paid into Court as aforesaid, as follows:-(a)The costs of the plaintiff to Mr. . . . . . , his attorney [or pleader] or and the costs of the defendant to Mr. . . . . , his attorney [or pleader](b)And (if any debts are due) with the residue of the said sum of Rs. .... after payment of the plaintiff's and defendant's costs as aforesaid let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the. ....1, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the.....schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.(3)And if there should then be any residue, let the same be paid to the residuary legatee**No. 19Preliminary Decree in an Administration-Suit by a Legatee, where an Executor is held Personally Liable for the Payment of Legacies**(Title)1. It is declared that the defendant is personally liable to pay the legacy of Rs. . . . . bequeathed to the plaintiff.(2)And it is ordered that an account be taken of what is due for principal and interest on the said legacy.(3)And it is also ordered that the defendant do, within. . .weeks after date of the certificate of the [. . . . .] [Here insert name of proper officer,] pay to the plaintiff the amount of what the. . . . . shall certify to be due for principal and interest.(4)And it is ordered that the defendant do pay the plaintiff his cost of suit, the same to be taxed in case the parties differ.\*Here insert name of proper officer.**No. 20Final Decree in an Administration-Suit by Next-of-Kin**(Title)1. Let the. . . . . 1 of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. . . . . , the balance by the said certificate found to be due from the said defendant on account of the personal estate of E.F., the intestate, within one week after the taxation of the said costs by the said . . . . . 1, and let the defendant retain for her own use out of such sum her costs, when taxed.(2)And it is ordered that the residue of the said sum of Rs. . . . . after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follow:-(a)Let the defendant, within one week after the taxation of the said costs by the. . . . . 1as aforesaid, pay one-third share of the said residue to the plaintiffs A.B., and C.D., his wife, in her right as the sister and one of the next-of-kin of the said E.F., the intestate.(b)Let the defendant retain for her own use one other third share of said residue,

as the mother and one of the next-of-kin of the said E.F., the intestate.(c)And let the defendant, within one week after the taxation of the said costs by the . . . . . 1as aforesaid, pay the remaining one-third share of the said residue to G.H., as the brother and the other next-ofkin of the said E.F., the intestate.\*Here insert name of proper officer.**No. 21Preliminary Decree in a Suit for Dissolution of Partnership and the Taking of Partnership Accounts**(Title)It is declared that the proportionate shares of the parties in the partnership are as follows:-It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the . . . . .day of. . . . ., and it is ordered that the dissolution thereof as from that day be advertised in the . . . . .Gazette, etc.And it is ordered that. . . . . be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.And it is ordered that the following accounts be taken:-(1)An account of the credits, property and effects now belonging to the said partnership;(2)An account of the debts and liabilities of the said partnership;(3)An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the. . . . . Here insert name of proper officer. may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the . . . . .day of. . . . ., and that the. . . . . 1 do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the. . . . . day of. . . . .And, lastly, it is ordered that this suit stand adjourned for making a final decree to the . . . . .day of. . . . .\*Here insert name of proper officer.**No. 22Final Decree in a Suit for Dissolution of Partnership and the Taking of Partnership Accounts**(Title)It is ordered that the fund now in Court, amounting to the sum of Rs. . . , be; applied as follows:-(1)In payment of the debts due by the partnership set forth in the certificate of the. . . . . 1amounting in the whole to Rs.. . . . .(2)In payment of the costs of all parties in this suit, amounting to Rs. . . . . . . . . .[These costs must be ascertained before the decree is drawn up.](3)In payment of the sum of Rs. . . . . to the plaintiff as his share of the partnership-assets, of the sum of Rs.. . . . , being the residue of the said sum of Rs. . . .now in Court to the defendant as his share of the partnership-assets.[Or, And that, the remainder of the said sum of Rs. . . .be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. . . . . certified to be due to him in respect of the partnership-accounts.](4)And that the defendant [or plaintiff] do on or before the. . . . .day of. . . . . pay to the plaintiff [or defendant] the sum or Rs. . . . . being the balance of the said sum of Rs. . . . . due to him, which will then remain due.\*Here insert name of proper officer.**No. 23Decree for Recovery of Land and Mesne Profit**(Title)It is hereby decreed as follows:-(1)that the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.(2)That the defendant do pay to the plaintiff the sum of Rs. . . .with interest thereon at the rate of. . . . . per cent per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.Or(2)That an inquiry be made as to the account of mesne profits which have accrued due prior to the institution of the suit.(3)That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree

-holder through the Court] [the expiration of three years from the date of the decree]./SCHEDULE High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras.-(9.6.1959).[Madras].-Insert the following after Form No. 23:-**No. 24 DECREE SANCTIONING A COMPROMISE OF A SUIT ON BEHALF OF A MINOR OF LUNATIC**(Title)The suit coming on this day for final disposal in the presence of, etc., and C.D., the defendant, a minor by E.F., his guardian ad litem, applying that this suit may be compromised in the terms of an agreement in writing, dated the .....day of .....and made between A.B., the plaintiff, of the one part, and the said C.D. by the said guardian ad litem of the other part (or, on the terms hereafter set forth), and it appearing to this Court that the said compromise is fit and proper and for the benefit of the said minor, this Court doth sanction the said compromise, on behalf of the said minor, and with the consent of all parties hereto; it is ordered as follows:- (Set out the terms of the compromise)."

## APPENDIX – E

**EXECUTION No. 1 Notice to Show Cause Why a Payment or Adjustment should not be Recorded as Certified**(Order 21, Rule 2)(Title)To Whereas in execution of the decree in the above-named suit. . . . . has applied to this Court that the sum of Rs. . . . . recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the. . . . . day of .... 20. . . . ., to show cause why the payment/adjustment aforesaid should not be recorded as certified. Given under my hand and the seal of the Court, this. . . . . day of 20.**No. 2 Precept**(Section 46)(Title)Upon hearing the decree-holder it is ordered that this precept be sent to the Court of. . . . . at. . . . . under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decreeholder for execution of the decree.**No. 3 Order Sending Decree for Execution to another Court**(Order 21, Rule 6)(Title)Whereas the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of. . . . . at . . . . . for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits, of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order 21, rule 6, of the Code of Civil Procedure, 1908, it is :Ordered That a copy of this order be sent to . . . . . with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction. Dated the . . . . . day of .... 20 . . . . ., Judge**No. 4 Certificate of Non-Satisfaction of Decree**(Order 21, Rule 6.)(Title)Certified that no satisfaction of the decree of this Court in suit No. . . . . of 20 . . . . ., a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court. Dated the . . . . . day of .... 20 . . . . ., Judge**No. 5 Certificate of Execution of Decree Transferred to Another Court**(Order 21, Rule 6)(Title){|-|| 1. | Number of suit and the Court by which the decree was passed.|-|| 2. | Name of parties.|-|| 3. | Date of application for execution.|-|| 4. | Number of execution case.|-|| 5. | Processes issued and dates of service thereof.|-|| 6. | Costs of execution.|-|| 7. | Amount realized.|-|| 8. | How the case is disposed of.|-|| 9. | Remarks.}|**No. 6 Application for Execution of Decree**(Order 21, Rule 11)In the Court of I . . . . I....., decree-holder, hereby apply for execution of the decree herein-below set forth :

789 of 1897	1	Number of suit.	
A.B.-PlaintiffC.D.-Defendant	.....	.....	2 Name of parties
.....	.....	.....	
October 11, 1897	3	Date of decree	
No.	4	Whether any appeal preferred from decree.	
None	5	Payment or adjustment made, if any.	
Rs. 72-4-0 recorded on application, dated the 4thMarch, 1899	6	Previous application, if any, with date and result	
Rs. 314-8-2 principal[interest at 6 per cent, per annum, from the date of decree till payment].	7	Amount with interest due upon the decree or other relief granted thereby together with particular of any cross-decree	
As awarded in the decreeTotal	Rs. a.	P. 8	Amount of costs, if any, awarded
47	10	4	
8	2	0	
55	12	4	
Against the defendant C.D.	9	Against whom to be executed	
[When attachment and sale of movable property is sought.]I pray that total amount of Rs. (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realized by attachment and sale of defendant's movable property as per annexed list and paid to me.[When attachment and sale of immovable property is sought.]I pray that the total amount of Rs. (together with interest on the principal sum up to date of payment) and the costs of taking out this execution be realized by the attachment and sale of defendant's	10	Mode in which the assistance of the Courts is required	

immovable property specified at the foot of this application and paid to me.

Signed. . . . ., decree-holder Dated the . . . . . day of . . . . . 20 . . . . .  
 ., [When attachment and sale of movable property is sought.] Description and specification of property  
 The undivided one-third share of the judgment-debtor in a house situated in the village of . . . . ., value Rs.40, and bounded as follows :-East by G's house; west by H's house; south by public road; north by private lane and J's house. I . . . . . declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified. Signed . . . . ., decree-holder  
**High Court Amendment-[Patna].**-In column 6, insert a comma after the word "date" and after the comma and before the words "and result", insert the words "date of final order passed on it".  
**No. 7 Notice to Show Cause Why Execution should not Issue** (Order 21, Rule 16) (Title) To Whereas . . . . . has made application to this Court for execution of decree in Suit No. . . . . of 20 . . . . ., on the allegation that the said decree has transferred to him by assignment [or without assignment] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.2077).], this is to give you notice that you are to appear before this Court . . . . . on the . . . . . day of . . . . . 20 . . . . ., to show cause why execution should not be granted. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . .  
**Judge. No. 8 Warrant of Attachment for Movable Property in Execution of a Decree for Money** (Order 21, Rule 30) (Title) To The Bailiff of the Court, Whereas . . . . . was ordered by decree of this Court passed on the day of . . . . . 20 . . . . ., in Suit No. . . . . of 20 . . . . ., to pay to the plaintiff. . . . . the sum of Rs. . . . . as noted in the margin; and whereas the said sum of Rs. . . . . has not been paid; These are to command you to attach the movable property of the said . . . . ., as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said . . . . ., and unless the said . . . . . shall pay to you the said sum of Rs. . . . . together with Rs. . . . ., the cost of this attachment, to hold the same until further orders from this Court. You are further commanded to return this warrant on or before the . . . . . day of . . . . . 20 . . . . ., with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . ., /SCHEDULE  
**Judge. High Court Amendments-[Allahabad].**-In Appendix E, Form No. 8, between the words "command you to attach" and the words "the movable property of the said", add the words "on or before the . . . . . day of . . . . . 20 . . . . ."  
**[Andhra Pradesh].**-Same as that of Madras. **[Kerala].**-Same as in Madras and for the word "Bailiff" substitute the word "Admin"-(9.6.1959). **[Madras].**-Same as that of Allahabad.  
**No. 9 Warrant for Seizure of Specific Movable Property Adjudged by Decree** (Order 21, Rule 31) (Title) To The Bailiff of the Court. Whereas . . . . . was ordered by decree of this Court passed on the . . . . . day of . . . . . 20 . . . . ., in Suit No. . . . . of 20 . . . . ., to deliver to the plaintiff the movable property (or a . . . . . share in the movable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered. These are to command you to seize the said movable property (or a . . . . . share of the said movable property) and to deliver it to the plaintiff or to such person as he may appoint in this behalf. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . ., /SCHEDULE  
**Judge. High Court Amendment-[Kerala].**-For the "Bailiff" substitute the word "Amin"-(9.6.1959).  
**No. 10 Notice to State Objection to Draft of Document** (Order 21, Rule 34) (Title) To Take notice that on the . . . . .

..... day of ..... 20 ...., ..... the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of ....., whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the ..... day of ..... 20 ...., is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft. Description of property Given under my hand and the seal of the Court, this ..... day of ..... 20 ...., Judge. **No. 11 Warrant to the Belief to Give Possession of Land, etc.** (Order 21, Rule 35) (Title) To The Bailiff of the Court. Whereas the undermentioned property in the occupancy of ..... has been decreed to ....., the plaintiff in this suit; You are hereby directed to put the said ..... in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same. Given under my hand and the seal of the Court, this ..... day of ..... 20 ...., /SCHEDULE Judge. High Court Amendment-[Kerala].-For the "Bailiff" substitute the word "Amin"-(9.6.1959). **No. 12 Notice to Show Cause Why Warrant of Arrest should not Issue** (Order 21, Rule 37) (Title) To Whereas . . . . . has made application to this Court for execution of decree in Suit No. .... of 19 ..... by arrest and imprisonment of your person, you are hereby required to appear before this Court on the ..... day of ..... 19 ....., to show cause why you should not be committed to the civil prison in execution of the said decree. GIVEN under my hand and the seal of the Court, this ..... day of ..... 19 . JUDGE. **No. 13 Warrant of Arrest in Execution** (Order 21, Rule 38) (Title) To The Bailiff of the Court. Whereas ..... was adjudged by a decree of the Court in suit No. .... of 20 ...., dated the ..... day of ..... 20 ...., to pay to the decree-holder the sum of Rs. .... as noted in the margin, and whereas the said sum of Rs. .... has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs. .... together with Rs. .... for the cost of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the ..... day of ..... 20 ...., with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed. Given under my hand and the seal of the Court, this ..... day of ..... 20 ...., Judge. High Court Amendments-[Andhra Pradesh].-Same as that of Madras. [Karnataka].-Same as that of Madras except for the substitution of "Order 21, Rule 25(3)" for "Order 21, Rule 25(2)"-(R.O.C. No. 2526/1959, dated 9.2.1967). [Kerala].-Same as in Madras and for the word "Bailiff" substitute the word "Amin"-(9.6.1959). [Madras].-In Form No. 13 between the word "the cost executing this process" and the words "to bring the said defendant" add the words "or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in Order XXI, rule 25(2)". **No. 14 Warrant of Committal of Judgment-Debtor to Jail** (Order 21, Rule 40) (Title) To The Officer in charge of the Jail at Whereas ..... who has been brought before this Court this ..... day of ..... 20 ...., under a warrant in execution of a decree which was made and pronounced by the said Court on the ..... day of ..... 20 ...., and by which decree it was ordered that the said ..... should pay .....; And whereas the said ..... has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby commanded and required to take and receive the said ..... into the civil prison and keep him imprisoned therein for a period not exceeding ..... or until the

said decree shall be fully satisfied, or the said . . . . . shall be otherwise entitled to be released according to terms and provisions of Section 58 of the Code of Civil Procedure, 2008; and the Court does hereby fix [\* \* \*] [The word " annas" omitted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, (w.e.f. 1.2.1977).]per diem as the rate of the monthly allowance for the subsistence of the said . . . . . during his confinement under this warrant of committal.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . .,Judge.High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as in Madras and for the word "Bailiff" substitute the word "Amin" and for the words "Central Nazir" the word "Nazir"-(9.6.1959).[Madras.]-Insert the following as Form 14-A:-"No. 14-AORDER OF ENTRUSTMENT OF JUDGMENT-DEBTOR TO THE CUSTODY OF AN OFFICER OF COURT[Order 21, Rule 40, sub-rule (2) and the proviso to sub-rule (3)]In the Court of the . . . . . of . . . . .ToThe Bailiff of the CourtWhereas . . . . . who has been brought before this Court, this day of . . . . . 20 . . . . ., under warrant in execution of a decree which was made and pronounced by the said Court on the . . . . . day of . . . . . 20 . . . . ., and by which decree, it was ordered that the said judgment-debtor should pay Rs . . . . .And whereas the judgment-debtor has been ordered to be kept in the custody of an officer of the Court pending the enquiry under Order 21, rule 40, sub-rule (2).And whereas the said judgment-debtor has to be given an opportunity of satisfying the decree and for this end this Court is of opinion that the said judgment-debtor may be left in the custody of an Officer of Court.You are hereby '[\* \* \*] commanded and required to take and receive the said judgment-debtor into your custody and keep him in that custody for period of . . . . . days or until further orders of this Court. You are hereby further informed that he is not to be allowed to go anywhere except in your company. You are further required to produce the said judgment-debtor before this Court at the expiration of the period specified, if the decree be no sooner satisfied.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20.....By orderCentral Nazir."No. 15Order for the Release of a Person Imprisoned in Execution of a Decree(Sections 58, 59)(Title)ToThe Officer in charge of the Jail at . . . . .Under orders passed this day, you are hereby directed to set free . . . . . judgment-debtor now in your custody.Dated. . . . . Judge.High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Calcutta].-Insert the following ater Form No. 15:-"No. 15-ABOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSONS AND SURETIES[Order 21-A, Rule 3(a) and 5]In the Court of . . . . . at . . . . .Civil Suit No . . . . . of . . . . .A.B. of . . . . . of . . . . .

all men by these presents that we, I.J. of . . . . . etc., and K.L. of . . . . . etc.,and M.N. of . . . . . etc., are jointly and severally bound to the Judge of the Court of . . . . . in Rs..... to be paid to the said Judge, for which payment to be made we bind ourselves, and each of us in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.Dated this . . . . . day of . . . . . 20 . . . . .And whereas the movable property/ livestock specified in the schedule hereunto annexed has been attached under a warrant from the

said Court dated the ..... day of ..... 20..... in execution of a decree in favour of ..... in Suit No..... of ..... 20..... on the file of ..... and the said property has been left in the charge of the said If. Now the condition of this obligation is that if the above bounden I.J. shall duly account for any loss which the owner of the property/ livestock may suffer due to willful negligence of the bounden and produce when required before the said Court all and every property/ livestock aforesaid (and shall properly maintain and take due care of the livestock aforesaid) and shall obey any further order of the Court in respect thereof, then this obligation shall be void; otherwise it shall remain in full force and be enforceable against the above bounden I.J. in the execution proceedings. I.J.K.L.M.N. Signed and delivered by the above bounden in the presence of ..... "[Himachal Pradesh].-Same as that of Punjab.[Gauhati].-Same as that of Calcutta.[Karnataka].-Same as that of Madras.[Kerala].-Same as that of Madras-(9.6.1959).[Madras].-(i) For "Dated" substitute the words "Given under my hand and the seal of the Court, this.....day of.....20....."(ii) Add the following Form: "No.15-ABOND FOR SAFE CUSTODY OF McTNB LE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES[Order 21 Rule 43] In the Court of ..... at

.....Civil Suit No  
..... of .....A.B. of

D. of

.....  
all men by these presents that we, I.J. of ..... etc., and K.L. of ..... etc., and M.N. of ..... etc., are jointly and severally bound to the Judge of the Court of ..... in Rs..... to be paid to the said Judge, for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents. Dated this ..... day of ..... 20 ..... And whereas movable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the ..... day of ..... 20 ..... in execution of a decree in favour of ..... in Suit No ..... 20 ..... on the file of ..... and the said property has been in charge of the said 1. J. Now the condition of this obligation is that, if the above bounden I.J. shall duly account for and produce when required before the said Court all and every property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void; otherwise it shall remain in full force. I.J.K.L.M.N. Signed and delivered by the above bounden in the presence of.....[Punjab].-(i) Form 15-A same as Madras.(ii) Add the following as Form No. 15-B: "No. 15-BBOND FOR SAFE CUSTODY OF ME-PIRTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES[Order 21 Rule 43(1)(c)] In the Court of ..... at

.....Civil Suit No  
..... of .....A.B. of

of

.....  
all men by these presents that we, I.J. of ..... etc., and K.L. of ..... etc., and M.N. of ..... etc., are jointly and severally bound to the Judge of the Court of ..... in Rs..... to be paid to the said Judge for which



payment to be made, we bind ourselves and each of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, by these presents. Dated this ..... day of ..... 20 ..... And whereas movable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the ..... day of ..... 20 ..... in execution of a decree in favour of ..... in Suit No. .... of ..... 20 ..... on the file of ..... and the said property has been in the charge of the said 1. J. Now the condition of this obligation is that, if the above bounden If. shall duly account for and produce when required before the said Court, all and every property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void, otherwise it shall remain in full force and be enforceable against the above bounden, I.J., in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I.J., were a surety for the restoration of property taken in execution of a decree. I.J.K.L.M.N. Signed and delivered by the above bounden in the presence of.....[Rajasthan].-Form No. 15-A and 15-B, same as that of Punjab.(No. 8/S.R.C. Jodhpur, dated 23.12.1964). **No. 16 Attachment in Execution** Prohibitory Order, where the Property to be Attached Consists of Movable Property to which the Defendant is Entitled Subject to a lien or Right of some other Person to the Immediate Possession thereof (Order 21, Rule 46) (Title) To Whereas ..... has failed to satisfy a decree passed against ..... on the ..... day of ..... 20 ....., in Suit No. .... of 20 ....., in favour of .... for Rs. ....; It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from ..... the following property in the possession of the said, ..... that is to say, ....., to which the defendant is entitled, subject to any claim of the said ....., and the said ..... is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever. Given under my hand and the seal of the Court, this ..... day of ..... 20 ....., Judge. **No. 16-A AFFIDAVIT OF ASSETS-TO BE MADE BY A JUDGMENT-DEBTOR** [Order 21 Rule 41(2)] In the Court of

.....A.  
 B ..... Decree-holder, vs. C  
 ..... Judgment-debtor. I .  
 ..... of  
 ..... state on oath/soleman affirmation as follows: (1) My full name is ..... (Block capitals) (2) I live at ..... \*3. I am married single widower (widow) divorced (4) The following persons are dependent upon me: (5) My employment, trade or profession is that of ..... carried on by me at ..... I am a director of the following companies : (6) My present annual/monthly/weekly income, after paying income-tax, is as follows:-(a) From my employment, trade or profession Rs ..... (b) From other sources Rs ..... \*7. (a) I own the house in which I live ; its value is Rs ..... I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs. (b) I pay as rent the annual sum of Rs ..... (8) I possess the following: (a) Banking accounts; (b) Stocks and shares; (c) Life and endowment policies; Give particulars. (d) House property; (e) Other property; (f) Other securities; (g) The following debts are due to me:-(Give particulars) (a) From ..... Of ..... Rs ..... (b) From

..... of .....Rs  
 .....Sworn before me, etc.]**No. 17Attachment in Execution**Prohibitory Order, where the Property Consists of Debts not Secured by Negotiable Instruments(Order 21, Rule 46)(Title)ToWhereas. . . . . has failed to satisfy a decree passed against . . . . . on the . . . . . day of . . . . . 20. . . , in Suit No. . . . . of 20 . . . . . , in favour of until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, . . . . . and that you, the said . . . . . be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.Given under my hand and the seal of the Court, this . . . . . day of 20 . . . . .Judge.**No. 18Attachment in Execution**Prohibitory Order, where the Property Consists of Shares in the Capital of a Corporation(Order 21, Rule 46)(Title)ToDefendant and to . . . . . , Secretary of CorporationWhereas . . . had failed to satisfy a decree passed against . . . on the . . . day of. . . 20 . . . , in Suit No. . . . . of 20 . . . . . , in favour of. . . , for Rs. . . . ; It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of the Court, from making any transfer of. . . shares in the aforesaid corporation, namely, . . . or from receiving payment of any dividends thereon; and you, . . . , the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . .Judge.**No. 19Order to Attach Salary of Public Officer or Servant of Railway Company or Local Authority**(Order 21, Rule 48)(Title)ToWhereas . . . . . , judgment-debtor in the above-named case, is a (describe officer of judgment-debtor) receiving his salary (or allowances) at your hands; and whereas . . . . . , decree-holder in the said case, has applied in this Court for the attachment of the salary (or allowances) of the said . . . . . to the extent of. . . . . due to him under the decree; You are hereby required to withhold the said sum of. . . . . from the salary of the said . . . . . in monthly instalments of . . . . . and to remit the said sum (or monthly instalments) to this Court.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . .Judge.**No. 20Order of Attachment of Negotiable Instrument**(Order 21, Rule 51)(Title)ToThe Bailiff of the Court.Whereas an order has been passed by this Court on the . . . . . day of . . . . . 20 . . . , for the attachment of . . . ; You are hereby directed to seize the said . . . . . and bring the same into Court.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20...Judge.High Court Amendment-[Kerala].-Substitute the word "Amin" for "Bailiff"-(9.6.1959)**No. 21Attachment**Prohibitory Order, where the Property Consists of Money or of any Security in the Custody of a Court of Justice of Public Officer(Order 21, Rule 52).(Title)ToSir,The plaintiff having applied, under rule 52 of Order 21 of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (here state how the money is supposed to be in the hands of the person addressed, on what account, etc.), I request that you will hold the said money subject to the further order of this Court.I have the honour to be,Sir,Your most obedient Servant.Judge.Dated the . . . . . day of . . . . . 20...**No. 22Notice of Attachment of a Decree to the Court which Passed it**(Order 21, Rule 52).(Title)ToThe Judge of the Court of.....Sir,I have the honour to inform you that the decree obtained in your Court on the . . . . . day of . . . . . 20. . . by . . . . . in Suit No. . . . . of 1`9. . . , in which he was . . . . . and . . . . . was . . . has been attached by this Court on the application of . . . . . , the . . . . . in the suit specified above.You are therefore requested to stay the

execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor. I have the honour, etc. Judge. Dated the ..... day of. . . 20. . . **No. 23\*NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE**(Order 21, Rule 53)(Title)ToDefendant. Whereas an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the ..... day of ..... 20 . . . , in the Court of ..... in Suit No. .... of 20 . . . , in which ..... was ..... and ..... was ..... It is ordered that you, the said . . . . . , be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way. Given under my hand and the seal of the Court, this ..... day of ..... 20. . . Judge. **No. 24Attachment in ExecutionProhibitory Order, Where the Property Consists of Immovable Property**(Order 21, Rule 54)(Title)ToDefendantWhereas you have failed to satisfy a decree passed against you on the ..... day of ..... 20. . . . . , in Suit No. .... of 20. . . , in favour of .....for Rs. .... ; It is ordered that you, the said . . . . . , be, and you are hereby, prohibited and restrained, until the further order of the Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all person be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise. [It is also ordered that you should attend Court on the ..... day of ..... 19. . . to take notice of the date fixed for setting the terms of the proclamation of sale.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] Given under my hand and the seal of the Court, this ..... day of ..... 20. . . . . /SCHEDULEJudge. **No. 25Order for Payment to the Plaintiff, etc., of Money, etc., in the Hands of a Third Party**(Order 21, Rule 56)(Title)ToWhereas the following property ..... has been attached in execution of a decree in Suit No. .... of ..... 20 . . . , passed on the ..... day of ..... 20. . . , in favour of ..... for Rs. .... It is ordered that the property so attached, consisting of Rs. .... in money and Rs. .... in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said . . . . . to ..... Given under my hand and the seal of the Court, this . . . . . day of ..... 20 . . . Judge. **No. 26Notice to Attaching Creditor**(Order 21, Rule 58)(Title)ToWhereas ..... has made application to this Court for the removal of attachment on ..... placed at your instance in execution of the decree in Suit No. .... of ..... 20. . . , this is to give you notice to appear before this Court on . . . . . , the . . . . . . . . . . day of ..... 20. . . either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor. Given under my hand and the seal of the Court, this . . . . . . . . . . day of ..... 20. . . Judge. **No. 27Warrant of Sale of Property in Execution of a Decree for Money**(Order 21, Rule 66)(Title)ToThe Bailiff of the Court. These are to command you to sell by auction, after giving ..... days' previous notice, by affixing the same in this Court-house, and after making due proclamation, the ..... property attached under a warrant from this Court, dated the ..... day of. . . 20. . . , in execution of a decree in favour of ..... in Suit No. .... of 20 . . . , or so much of the said property as shall realize the sum of Rs. .... , being the . . . . . of the said decree and costs still remaining unsatisfied. You are further commanded to retrun this warrant on or before the ..... day of ..... 20. . . , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed. Given under my hand and the seal of the Court, this ..... day of ..... 20 . . . Judge. High Court

Amendments-[Kerala].-Substitute the word "Amin" for "Bailiff" - (9.6.1959).[Madras].-(i) In Appendix E, Form No. 27 shall be re-numbered as Form No. 28, and before the Form as so re-numbered the following Form shall be inserted, namely:-**No. 27 NOTICE OF SALE**[Order 21, Rule 64](Title)To Judgment-debtor. Whereas in the above-mentioned suit ..... the decree-holder has applied for the sale of ..... you are hereby informed ..... that the ..... day of ..... 20...., has been fixed for settling the terms of proclamation of sale. Given under my hand and the seal of the Court, this ..... day of ..... 20..... Judge. "(10-4-1963).(ii) After the paragraph beginning with the words "these are to command your" and ending with words "and costs still remaining unsatisfied", insert the following: "You are further commanded to stop the sale if before the lot is knocked down the aforesaid sum of Rs ..... and the costs of the sale be paid to you or proof is given to your satisfaction that the aforesaid sum of Rs ..... and the costs of the sale have been paid into the Court which ordered the sale."-(30-12-1959).**No. 28 Notice of the Day Fixed for Setting a Sale Proclamation**(Order 21, Rule 66)(Title)To Judgment-debtor. Whereas in the above-named suit . . . . . , the decree-holder, has applied for the sale of . . . . . ; you are hereby informed . . . . . that the . . . . . day of . . . . . 20. . . . , has been affixed for settling the terms of the proclamation of sale. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . Judge. High Court Amendment-[Madras].-Form No. 28 shall be re-numbered as Form No. 28-A-(10.4.1963).**No. 29 Proclamation of Sale**(Order 21, Rule 66)(Title){|-| Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of|-| Suit No.....of 20....., decided by the .....of.....in which .....was plaintiff and.....was defendant.|-| the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of .....|}The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot. In the absence of any order of postponement, the sale will be held by . . . . . at the monthly sale commencing at . . . . . o'clock on the . . . . . at . . . . . In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped. At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.**Conditions of sale**(1)The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.(2)The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.(3)The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.(4)For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order

21.(5)In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.(6)In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property and forthwith be put up again and re-sold.(7)The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.(8)In default of payment of the balance of purchase-money within the period allowed, the property shall be resold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.Given under my hand and the seal of the Court, this . . . . . day of . . . . .

... 20. . . Judge./**SCHEDULE of Property**

	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in estate or a part of an estate paying revenue to Government	Detail of any encumbrances to which the property is liable	Claims, if any, which have been put forward to the property and any other known particular bearing on its nature and value	[481][The value of the property as stated by the judgment-debtor]	The value of the property as stated by the judgment-debtor]
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High Court Amendments-[Allahabad].-In Form No. 29, delete the sentence "No bid by....Previously given" in the paragraph above "Conditions of sale".[Andhra Pradesh].-Same as that of Madras (i)[Kerala].-(i)Same as that of Madras (i)(9.6.1959).(ii)After condition No. 8, the following shall be added, namely:-"9.(a) if the sale in Court cannot be proceeded with owing to the absence of the presiding officer it shall stand adjourned to the corresponding day of the following week.(b)if the sale as proclaimed or as adjourned under clause (a) cannot be proceeded with owing to that day being a holiday, the sale shall stand adjourned to the next Court day."-(22.0.1964).[Madras].-(i) Add the following as a "Note" to Form No. 29 (Proclamation of sale) Appendix E to Schedule I:-"Note.-The title deeds relating to the property have not been filed in court, and the purchaser will take the property subject to the risk of there being mortgages by deposit of title deeds; or mortgages not disclosed in the encumbrance certificate".(ii)In the Tabular statement appended to Form No. 29, after column (5), insert the following columns, namely:-"Column (6)-Value of property as stated by the decree-holder.Column (7)-Value of property as stated by the judgment-debtor."-(10.4.1963).No. 30Order on the Nazir for Causing Service of Proclamation of Sale(Order 21, Rule 66)(Title)ToThe Nazir of the Court.Whereas an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the . . . . . day of . . . .

... 20. . . , has been fixed for the sale of the said property, . . . . copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published. Date the . . . . . day of . . . . . 20. . . . .

**Judge.No. 31 Certificate by Officer Holding a Sale of the Deficiency of Price on a Re-sale of Property by Reason of the Purchaser's Default**(Order 21, Rule 71)(Title)Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of. . . . . , purchase, there was a deficiency in the price of the said property amounting to Rs. ...., and that the expenses attending such re-sale amounted to Rs. . . . . . , making a total of Rs. . . . . . , which sum is recoverable from the defaulter. Dated the . . . . . day of . . . . . 20. . . . .

**Officer holding the sale.No. 32 Notice to Person in Possession of Movable Property Sold in Execution**(Order 21, Rule 79)(Title)ToWhereas . . . . . has become the purchaser at a public sale in execution of the decree in the above suit of . . . . . now in your possession, you are hereby prohibited from delivering possession of the said . . . . . to any person except the said . . . . . Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . .

**Judge.No. 33 Prohibitory Order against Payment of Debts Sold in Execution to any Other than the Purchaser**(Order 21, Rule 79)(Title)Toand to . . . . . .Whereas . . . . . has become the purchaser at a public sale in execution of the decree in the above suit of . . . . . being debts due from you . . . . . to you . . . . . ; It is ordered that you . . . . . be, and you are hereby, prohibited from receiving, and you . . . . . from making payment of, the said debt to any person of or person except the said . . . . . Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . .

**Judge.No. 34 Prohibitory Order against the Transfer of Share Sold in Execution**(Order 21, Rule 79)(Title)To. . . . . . and . . . . . , Secretary of . . . . . Corporation. Whereas . . . . . has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of . . . . . standing in the name of you . . . . . ; It is ordered that you . . . . . be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said . . . . . , the purchaser aforesaid, or from receiving any dividends thereon; and you . . . . . , Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said . . . . . , the purchaser aforesaid. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . .

**Judge.No. 35 Certificate to Judgment-debtor Authorising him to Mortgage Lease or Sell Property**(Order 21, Rule 83)(Title)Whereas in execution of the decree passed in the above suit an order was made on the . . . . . day of . . . . . 20. . . . . , for the sale of the under-mentioned property of the judgment-debtor . . . . . , and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof: This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of . . . . . from the date of this certificate; provided that all monies payable under such mortgage, lease or sale be paid into this Court and not to the said judgment-debtor. Description of property Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . .

**Judge.No. 36 Notice to Show Cause Why Sale should not be Set**

Aside(Ord 21, Rule 90, 92)(Title)ToWhereas the under-mentioned property was sold on the . . . .  
 .... day of ..... 20 . . . , in execution of the decree passed in the abovenamed suit, and  
 whereas . . . . . , the decree-holder [or judgement-debtor], has applied to this Court to set aside  
 the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or  
 conducting] the sale, namely, that . . . . . Take notice that if you have any cause to show why the  
 said application should not be granted, you should appear with your proofs in this Court on the . . . .  
 . . . . . day of ..... 20 . . . , when the said application will be heard and determined. Given  
 under my hand and the seal of the Court, this . . . . . day of ..... 20 . . . . Description of  
 property Judge. Judge. **No. 37 Notice to Show Cause Why Sale should not be Set**

**Aside**(Ord 21, Rule 91, 92)(Title)ToWhereas . . . . . , the purchaser of the under-mentioned  
 property sold on . . . . . the day of . . . . . 20 . . . , in execution of the decree passed in the  
 above-named suit, has applied to this Court to set aside the sale of the said property on the ground  
 that . . . . . , the judgment-debtor, had no saleable interest therein. Take notice that if you have  
 any cause, to show why the said application should not be granted, you should appear with your  
 proofs in this Court on the . . . . . day of ..... 20 . . . , when the said application will  
 be heard and determined. Given under my hand and the seal of the Court, this . . . . . day of  
 ..... 20 . . . . Description of property Judge. Judge. **No. 38 CERTIFICATE OF SALE OF**  
**LAND**[Ord 21 Rule 94](Title)This is to certify that.....has been declared the purchaser at a sale  
 by public auction on the .....day of.....20.....,of.....in execution of decree in this suit, and that  
 the said sale has been duly confirmed by this Court. Given under my hand and the seal of the Court,  
 this.....day of.....20...Judge High Court Amendments-[Allahabad].-Substitute the words  
 "Immovable property" for "Land" in the heading.[Bombay].-Substitute the following for Form No.  
 38:-**No. 38 Certificate of Sale of Land**(Ord 21, Rule 94)(Title)This is to certify that . . . . .  
 has been declared the purchaser at a sale by public auction on the . . . . . day of .....  
 20 . . . , of . . . . in execution of decree in this suit, and that the said sale has been duly confirmed by  
 this Court. Given under my hand and the seal of the Court, this . . . . . day of ..... 20.  
 . . . Judge.(1.10.1983).[Kerala].-In Form No. 38, at the end, the following Schedule shall be inserted,  
 namely:-/SCHEDULE

Number.

District

Taluk.

Village.

Muri or Desom.

Lekkom.

Survey Number.

Acre.

Cent.

Description of the property.

East.

South.

North.

Right, title and interest on the judgment-debtor in the property.

Amount specified in the proclamation of the sale.

Sale amount.

[Madhya Pradesh].-In Form No. 38, insert the word "For Rs....."between the words "the purchaser" and "at a sale"-(16.9.1960).[Orissa].-Same as that of Patna.[Patna].-Substitute the following Form for Form No. 38:-**No. 38 CERTIFICATE OF SALE OF LAND**[Order 21 Rule 94]District .....In the Court of ..... at..... Execution of Case No..... of 20....Decree-holder versus Judgment-debtor. This is to certify that .....son of ....., by caste ..... by occupation.....resident of ..... Thana....., District..... has been declared the purchaser at a sale by public auction on the ..... day of..... 20..., of the property specified below in execution of the decree in Suit No ..... of this Court' and that the said sale has been duly confirmed by this Court. Given under my hand and the seal of the Court, this ..... day 2 of ..... 20..... Specification and price of properties.'Judge."**No. 39 Order for Delivery to Certified Purchaser of Land at a Sale in Execution**(Order 21, Rule 95)(Title)To The Bailiff of the Court, Whereas . . . . . has become the certified purchaser . . . . . of . . . . . at a sale in execution of decree in Suit No. . . . . of . . . . . 20 . . . ; You are hereby ordered to put the said . . . . . , the certified purchaser, as aforesaid, in possession of the same. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . Judge. High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Substitute the word "Amin" for "Bailiff" - (9.6.1959).[Madras].-Substitute the following Form for Form No. 39:-**No. 39 ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION**[Order 21 Rule 95](Title)To The Bailiff of the Court Whereas ..... has become the certified purchaser of ..... at a sale in execution of decree in Suit No ..... of..... 20....; You are hereby ordered to put the said ..... the certified purchaser, as aforesaid, in possession of the same. Given under my hand and the seal of the Court, this ..... day of ..... 20.....Judge."**No. 40 Summons to Appear and Answer Charge of Obstructing Execution of Decree**(Order 21, Rule 97)(Title)To Whereas . . . . . the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession: You are hereby summoned to appear in this Court on the . . . . . day of . . . . . 20 . . . , at . . . a.m., to answer the said complaint. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . Judge.**No. 41 Warrant of Committal**(Order 21, Rule 98)(Title)To The officer in charge of the Jail at. . . . . Whereas the under-mentioned property has been decreed to . . . . . , the plaintiff in this suit, and whereas the Court is satisfied that . . . . . without any just cause resisted [or obstructed] and is still resisting [or obstructing] the said . . . . . in obtaining possession of the property, and whereas the said . . . . . has made application to this Court that he said . . . . . be committed to the civil prison; You are hereby commanded and required to take and receive the said . . . . . into the civil prison and to keep him imprisoned therein for the period of . . . . . days. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . Judge.**No. 42 Authority of the Collector to Stay Public Sale of Land**(Section 72)(Title)To Collector of . . . . . Sir, In answer to your communication No. . . . . dated . . . . . representing that the sale in execution of the decree in this suit of . . . . . land situate within your district is objectionable, I have the honour to inform you that you are authorised to make provision for the



satisfaction of the said decree in the manner recommended by you. I have the honour to be, Sir, Your obedient servant Judge. High Court Amendment-[Allahabad].-Add the following Form as Form No. 43:- "No. 43 The security to be furnished under section 55(4) shall be, as nearly as may be, by a bond in the following form: In the Court of ..... at ..... Suit No. .... of ..... 20 ..... A.B. of ..... Plaintiff against C. D. of ..... Defendant Whereas in execution of the decree in the suit aforesaid, the said C.D. has been arrested under a warrant and brought before the Court of .....: and whereas the said C.D., has applied for his discharge on the ground that he undertakes within one month to apply under section 5 of Act No. III of 1907 to be declared an insolvent, and the said Court has ordered that the said C.D., shall be released from custody if the said C.D., furnished good and sufficient security in the sum of Rs ..... that he will appear when called upon and that he will within one month from this date apply under section 5 of Act III of 1907 to be declared an insolvent; Therefore, I, E.F., inhabitant of ..... have voluntarily become security, and do hereby bind myself, my heirs and executors, to ..... as Judge of the said Court and his successors in office that the said C.D. will appear at any time when called upon by the said Court, and will apply in the manner and within the time herein before set forth, and in default of such appearance or of such application, I bind myself, my heirs and executors, to pay to the said Court on its order, the sum of Rs ..... Witness my hand at this ..... day of ..... 20 ..... Witness: (Sd.) E.F. Surety" (22-5-1915).

## APPENDIX – F

### SUPPLEMENTAL PROCEEDINGS No. 1 Warrant of Arrest before Judgment (Order 38, Rule 1) (Title) To The Bailiff of the Court.

Whereas ..... the plaintiff in the above suit, claims the sum of Rs. .... as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to ..... These are to command you to demand and receive from the said ..... the sum of Rs. .... as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. .... is forthwith delivered to you by or on behalf of the said ..... to take the said ..... into custody, and to bring him before this Court in order that he may show cause why he should not furnish security to the amount of Rs ..... for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

{ |

Principal

Interest

Costs

Total

| - | } Given under my hand and the seal of the Court, this ..... day of ..... 20 ..

. Judge. High Court Amendment-[Kerala].-Substitute the word "Amin" for "Bailiff"-(9.6.1959). No.

### 2 SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE

**JUDGMENT**(Title)WHEREAS at the instance of....., the plaintiff in the above suit, the defendant, has been arrested and brought before the Court;And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:Therefore I ..... have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.Witness my hand at ..... this ..... day of ..... 20...(Signed)Witnesses.(1)(2)**No. 3Summons to Defendant to Appear on Surety's Application For Discharge**(Order 38, Rule 3)(Title)ToWhereas ....., who became surety on the ..... day of ..... 20... for your appearance in the above suit, has applied to this Court to be discharged from this obligation:You are hereby summoned to appear in this Court in person on the ..... day of ..... 20..., at ..... a.m., where the said application will be heard and determined.Given under my hand and the seal of the Court, this ..... day of ..... 20... Judge.**No. 4Order For Committal**(Order 38, Rule 4)(Title)ToWhereas ....., plaintiff in this suit, has made application to the Court that security be taken for the appearance of ....., the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he had failed to do; it is ordered that the said defendant ..... be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.Given under my hand and the seal of the Court, this ..... day of ..... 20... Judge.**No. 5Attachment before Judgment, with Order to Call for Security for Fulfilment of Decree**(Order 38, Rule 5)(Title)ToThe Bailiff of the Court.Whereas ..... has proved to the satisfaction of the Court that the defendant in the above suit .....;.....These are to command you to call upon the said defendant ..... on or before the ..... day of ..... 20... either to furnish security for the sum of rupees ..... to produce and place at the disposal of this Court when required ..... for the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said ..... and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the ..... day of ..... 20..., with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.Given under my hand and the seal of the Court, this ..... day of ..... 20... Judge.High Court Amendment-[Kerala].-Substitute the word "Amin" for "Bailiff:-(9.6.1959).**No. 6Security for the Production of Property**(Order 38, Rule 5)(Title)Whereas at the instance of ....., the plaintiff in the above suit, ..... the defendant has been directed by the Court to furnish security in the sum of Rs. .... to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;Therefore I ..... have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing

I bind myself, my heirs and executors, to pay to the said Court, at its order; the said sum of Rs. . . . .  
 . . . . . of such sum not exceeding the said sum as the said Court may adjudge./SCHEDULEWitness  
 my hand at . . . . . this day of . . . . . 20. . . (Signed)Witnesses.(1)(2)High Court  
 Amendment-[Madras].-Insert the following as Form No. 6-A:-No. 6-A-NOTICEOrder 38, Rule  
 5TitleTo(Defendant's name and address)Whereas ..... the plaintiff has made the  
 above application praying for an attachment before judgment of the property mentioned in the  
 schedule hereunder to answer any judgment that may be passed in his favour.Take notice that you  
 ..... the defendant, are hereby directed on or before .....(1)To  
 furnish security of sum of Rs ..... (Rupees only).(2)To produce and place at the  
 disposal of the Court when required the entire property ...../items of the property  
 ...../the value of the entire property ...../the value of the items of the property  
 ..... mentioned in the Schedule hereunder sufficient to satisfy the decree that may be  
 passed in favour of the plaintiff.(3)To appear and show cause why you should not furnish  
 security.Given under my hand and the seal of the Court, this ..... day of .....  
 20.....Judge.The Schedule(28-10-1985)**No. 7Attachment before Judgment, on Proof of  
 Failure to Furnish Security**(Order 38, Rule 6)(Title)ToThe Bailiff of the Court.Whereas . . . . .  
 . . . , the plaintiff in this suit, has applied to the Court to call upon . . . . . the defendant, to  
 furnish security to fulfil any decree that may be passed against him in the suit, and whereas the  
 Court has called upon the said . . . . . to furnish such security, which he has failed to do; these  
 are to command you to attach . . . . . , the property of the said . . . . . , and keep the same  
 under safe and secure custody until the further order of the Court, and you are further commanded  
 to return this warrant on or before the . . . . . day of .... . 20 . . . . . with an  
 endorsement certifying the date on which and the manner in which it has been executed, or the  
 reason why it has not been executed.Given under my hand and the seal of the Court, this . . . . .  
 .... day of .... . 20. . . Judge.High Court Amendments-[Andhra Pradesh].-Same as that of  
 Madras.[Kerala].-Same as that of Madras and for the word "Bailiff" substitute the word "Amin" -  
 (9.6.1959).[Madras].-Insert the following as Form No. 7-A:-"No. 7-AATTACHMENT OF  
 IMMOVABLE PROPERTY BEFORE JUDGMENT(Title)To(Defendant)Whereas on the application  
 of ..... the plaintiff ..... in this suit, the Court calledupon you ..... the defendant to  
 furnish security to fulfil any decree that may be passed against you in the suit or to show cause why  
 you should not furnish such security and (you have failed to show cause why you should fur nish  
 such security)/(you have failed to fur rush security required within the time) fixed by the Court, it is  
 ordered that you, the said ..... be, and you are hereby prohibited and restrained  
 until the further order of this Court, from transferring or charging the properties described in the  
 schedule hereto annexed by sale, gift or otherwise and that all persons be, and that they are hereby  
 prohibited and restrained from receiving the same by purchase, gift or otherwise.Given under my  
 hand and the seal of the Court, this ..... day of ..... 20.....Judge.**No. 8Temporary  
 Injunctions**(Order 39, Rule 1)(Title)Upon motion made unto this Court by . . . . . Pleader of  
 [or Counsel for] the plaintiffA. B., and upon reading the petition of the said plaintiff in this matter  
 filed [this day] [or the plaint filed in this suit on the . . . . . day of .... . ,or the written  
 statement of the said plaintiff filed on the . . . . . day of .... . ] and upon hearing the  
 evidence of . . . . . and . . . . . in support thereof [if after notice and defendant not  
 appearing: and, and also, the evidence of . . . . . as to service of notice of this motion upon the  
 defendantC.D.]: This Court doth order that an injunction be awarded to restrain the defendantC.D.,

his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmongers Street, Hindupur, in a Taluk of . . . . . and from selling the materials where of the said house is composed, until the hearing of this suit or until the further order of this Court. Dated this . . . . . day of . . . . . 20. . . . . Judge. [Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:-]. . . . . to restrain the defendant . . . . . and . . . . . from parting without of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the . . . . ., etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court. [In Copyright cases] to restrain the defendant C.D., his servants, agents or workmen, from printing, publishing or vending a book, called . . . . . or any part thereof, until the, etc. [Where part only of a book is to be restrained]. . . . . to restrain the defendant C.D., his servant, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled. . . . . and also that part which is entitled . . . . . [or which is contained in page . . . . . to page . . . . . both inclusive] until . . . . ., etc. [In Patent cases] . . . . . to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's plaint [or petition, etc., or written statement, etc.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc. [In cases of Trade marks] . . . . . to restrain the defendant C.D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A.B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A.B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A.B., until the, etc. [To restrain a partner from in any way interfering in the business] to restrain the defendant C.D., his agents, and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc. **No. 9 Appointment of a Receiver** (Order 40, Rule 1) (Title) To Whereas . . . . . has been attached in execution of a decree passed in the above suit on the . . . . . day of . . . . . 20. . . . ., in favour of . . . . .; You are hereby (subject to

your giving security to the satisfaction of the Court) appointed receiver of the said property under Order 40 of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order. You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . . . . . You will be entitled to remuneration at the rate of . . . . . per cent. upon your receipts under the authority of this appointment. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20. . . . . Judge High Court

Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras - (9.6.1959).[Madras].-Substitute the following for Form No. 9 of Appendix F to Schedule 1:-**No. 9 APPOINTMENT OF A RECEIVER**[Order 40 Rule 1](Title)Whereas it appears to the Court that in the above suit it is just and convenient to appoint a receiver of the properties specified below (or whereas the properties specified below have been attached in execution of a decree passed in the above suit on the ..... day of ..... 2-0...., in favour of .....).It is hereby ordered that A B, be appointed (subject to his giving security to the satisfaction of the Court) the receiver of the said property and of the rents, issues and profits thereof under Order 40, of the Code of Civil Procedure, 1908, with all powers under the provisions of that Order except that he shall not without leave of the Court (1) grant leases for a term exceeding three years, or (2) institute suits in any court (except suits for rent), or (3) institute appeals in any Court (except from a decree in a rent suit) where the value of the appeal is over Rs. 1,000, or (4) expend on the repairs of any property in any period of two years more than half of the net annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired, would be let when in a fair state of repair, provided that such amount shall not exceed Rs. 1,000.And it is further ordered that the parties to the above suit and all persons defendants claiming under them do deliver up quiet possession of the properties, movable and immovable, specified below together with all leases, agreements for lease, kabuliats, account books, papers, memoranda and writings relating thereto the said receiver. And it is further ordered that the said receiver do take possession of the said property, movable and immovable, and collect the rents, issues and profits of the said immovable property, and that the tenants and occupiers do attorn and pay their rents in arrears and growing rents to the said receiver. And it is further ordered that the said receiver shall have power to bring and defend suit in his own name and shall also have power to use the names of the plaintiffs and defendants where necessary. And it is further ordered that the receipt or receipts of the said receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such receiver.And it is further ordered that the parties/defendants said receiver do, out of the first money to be received by him, pay the debts due from the said ..... and shall be entitled to retain in his hands the sum of Rs..... for current expenses, but subject thereto shall pay his net receipts, as soon as the same come to his hands into Court to the credit of the suit. He shall once in every ..... month, file his accounts and vouchers in Court, the first account to be filed on the day of ..... and to be passed on the ..... day of ..... He shall be entitled to commission at the rate of Rs ..... per cent. on the net amounts collected by him or to the sum of Rs ..... per month (or as the case may be) as his remuneration (or he shall act without any remuneration).And it is further ordered (where an additional office, establishment is required) that the said receiver shall be allowed to charge to the estate in addition to his own office establishment the following further establishment:(Here enter specification of property)Given under my hand and the seal of the Court, this ..... day of ..... 20.....Judge."**No. 10 Bond to be Given by Receiver**(Order 40, Rule 3)(Title)Know all

men by these presents, that we, ..... and ..... and ....., are jointly and severally bound to ..... of the Court of ..... in Rs. .... to be paid to be said ..... or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents. Dated this ..... day of ..... 20.. Whereas a plaint has been filed in this Court by ..... against ..... for the purpose of [here insert the object of suit]: And whereas the said ..... has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of ..... in the said plaint named: ..... Now the condition of this obligation is such, that if the above-bounden ..... shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property, of the said ..... at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void otherwise it shall remain in full force. Signed and delivered by the above-bounden in the presence of ..... Note.-If deposit of money is made, the memorandum thereof should follow the terms and the condition of the bond. High Court Amendments.-[Andhra Pradesh].-Same as that of Madras.[Madras].-For the space and the words "or his successor in office for the time being" substitute the word "Court". Form No. 11 High Court Amendment-[Allahabad].-Add the following form as Form No. 11:- "No. 11 The security to be furnished under Order 38, Rule 9, shall be as nearly as may be, by a bond in the following form: In the Court of ..... at ..... Suit No. .... of .....

20.....  
Plaintiff.VS.....

Defendant. Amount of suit, Rupees ..... Whereas in the suit above specified the plaintiff..... aforesaid has applied to the said Court that the said defendant ..... may be called on to furnish sufficient security to fulfil any decree that may be passed against him in the said suit, or that on his failure so to do certain property of the said defendant ..... may be attached. And whereas, on the failure of the said defendant ..... to furnish such security, or, show cause why it should not be furnished the property aforesaid of the said defendant. .... has been attached by order of the said Court : Therefore, I ..... inhabitant of ..... have voluntarily become security and hereby bind myself, my heirs and executors, to ..... as Judge of the said Court, and his successors in office, that the said defendant ....., shall produce and place at the disposal of the said Court, when required, the property hereinbelow specified, namely (here give description of property or refer to an annexed Schedule) or the value of the same, or such portion thereof as may be sufficient to fulfil such decree and shall when required pay the costs of the attachment, and in default of his so doing I bind myself, my heirs and executors to pay to ..... as Judge of the said Court and his successors in office on its order, such sum to the extent of rupees (here enter a sufficient sum to cover the amount of suit, with costs and the costs of the attachment) as the said Court may adjudge against the said defendant. Witness my hand at ..... this ..... day of ..... 20

...(signed.)(Surety)"22.5.1915). Witnesses:[Andhra Pradesh].-Same as that of Madras.[Kerala].-Same as that of Madras-(9.6.1959).[Madras].-Add the following as Form No. 11. **No. 11 BOND TO BE GIVEN BY RECEIVER (ORD 40, RULE 3) WHERE IMMOVABLE PROPERTY IS OFFERED AS**

SECURITY Know all men by these presents, that we and ..... are jointly and severally bound to the Court of ..... in Rs..... to be paid to the said Court, for which payment to be made we bind ourselves and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally by these presents and we do as security for the said payment, mortgage to the Judge of the said Court, his successors in office and assigns the undermentioned immovable properties which belong to us and of which we are possessed and which are free from mortgage, charge or any other encumbrance and the title deeds of which have been lodged in the District Court ..... Dated this ..... day of ..... 20 ..... (Paras from two onwards in Form No.10 will form the remaining portion of the bond.) Form No.12[Order 39 Rule 2(2)]The security to be furnished under Order 39, Rule 2(2) shall be, as far as may be, by a bond in the following form :In the Court of ..... at ..... Suit No..... of ..... 20....., ..... Plaintiff.vs..... Defendant. Whereas in the suit above specified, instituted by the said plaintiff ..... to restrain the said defendant ..... from (here state the breach of contract or other injury), the said Court, has on the application of the said plaintiff ..... granted an injunction to restrain the said defendant from the repetition (or the continuance) of the said breach of contract (or wrongful act complained of), and required security from the said defendant against such repetition (or continuance): Therefore, I . .... inhabitant of..... have voluntarily become security and do hereby bind myself, my heirs and executors . .... to ....., as Judge of the said Court and his successors in office that the said defendant ..... shall abstain from the repetition (or continuance) of the breach of contract aforesaid (or wrongful act, or from the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right), and in default of his so abstaining, I bind myself, my heirs and executors to pay into Court, on the order of the Court, such sum to the extent of rupees as the Court shall adjudge against the said defendant. Witness my hand at this ..... day of ..... 20 ..... (Signed) Surety." (25-5-1915). Witnesses:

## APPENDIX – G

APPEAL, REFERENCE AND REVIEW No. 1 Memornadum of Appeal (Order 41, Rule 1) (Title) The. . . . . above-named appeals to the . . . . . Court at . . . . . from the decree of . . . . . in Suit No. . . . . of . . . . . 20 . . . . ., dated the . . . . . day of . . . . . 20 . . . . , and sets forth the following grounds of objection to the decree appealed from, namely:- No. 2 Security Bond to be Given on Order Being Made to Stay Execution of Decree (Order 41, Rule 5) (Title) To This security bond on stay of execution of decree executed by . . . . . witnesseth:- That . . . . ., the plaintiff in Suit No. . . . . of 20 . . . having sued . . . . ., the defendant, in this Court and a decree having been passed on the . . . . . day of . . . . . . 20 . . . , in favour of the plaintiff, 239 and the defendant having preferred an appeal from the said decree in the . . . . . Court, the said appeal is still pending. Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. . . . . , mortgaging the properties specified in the schedule

hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this . . . . . day of . . . . . 20 . . . /SCHEDULE(Signed)Witnessed by(1)(2)High Court Amendment-[Andhra Pradesh].-Same as that of Madras.[Bombay].-The following to be added:-"Note.-Unless appropriately altered, the printed form binds the surety only to an immediate appeal from the decree mentioned in the bond and does not cover any obligation in respect of any further appeal."-(1.10.1983).[Kerala].-Insert after the words "varied by the appellate Court" the words "or in further appeal from the decree of the said Court."-(9.6.1959).[Madras].-In the second para, after the word "be confirmed or varied by the appellate Court" insert the words "or in further appeal or appeals from the decree of the said Court".No. 3Security Bond to be Given During the Pendency of Appeal(Order 41, Rule 6)(Title)ToThis security bond on stay of execution of decree executed by witnesseseth:-That . . . . . , the plaintiff in Suit No. . . . . of . . . 20 . . . , having sued, the defendant, in this Court and a decree having been passed on the . . . . day of . . . . 20 . . . , in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. . . . , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this . . . . . day of . . . . . 20 . . . /SCHEDULE(Signed)Witnessed by(1)(2)High Court Amendments.-[Andhra Pradesh].-Same as that of Madras.[Bombay].-(1) For the opening words "This security bond, on stay of execution of decree executed by" the following shall be inserted : "This security bond, on order being made for execution of decree, executed by"(2)The following to be added at the end of Form 3 :-"Note.-Unless appropriately altered, the printed form bind the surety only to an immediate appeal from the decree mentioned in the bond, and does not cover any obligation in respect of any further appeal."-(1.10.1983).[Kerala].-Same as that of Madras-(9.6.1959).[Madras].-In the second para after the words "be reserved or varied by the appellate Court" inser the words "or in further appeal or appeals from the decree of the said Court".No. 4Security for Costs of Appeal(Order 41, Rule 10)(Title)ToThis security bond for costs of appeal executed by . . . . . witnesseth:-This appellant has preferred an appeal from the decree in Suit No. . . . . of . . . 20 . . . , against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will stand security for the costs of the appeal, mortgaging the properties specified in the Schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant. I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal.Any amount so payable shall be realized from the properties hereby



mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this ..... day of ..... 20 ..

./SCHEDULE(Signed)Witnessed by(1)(2)No. 5Intimation to Lower Court of Admission of Appeal(Order 41, Rule 13)(Title)ToYou are hereby directed to take notice that ....., the ..... in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the ..... day of ..... 20 ... You are required to send with all practicable despatch all material papers in suit.Dated the ..... day of ..... 20 ... Judge.No. 6Notice to Respondent of the Day Fixed for the Hearing of the Appeal(Order 41, Rule 14)(Title)Appeal from the ..... of the Court ..... of ..... the ..... day of ..... 20 ...

.ToRespondentTake notice that an appeal from the decree of ..... in this case has been presented by ..... and registered in this Court, and that the ..... day of ..... 20 ..... has been fixed by this Court for the hearing of this appeal.If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.Given under my hand and the seal of the Court, this. .... day of ..... 20 ... Judge.[Note-If a stay of execution has been ordered, intimation should be given of the fact on this notice.]High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Kerala].-Forms 6-A and 6-B as in Madras except for "Madras" substitute "Kerala."-(9.6.1959).[Madras].-Insert the following not in red ink in Form no. 6 of Appendix G to Schedule I, namely:-"Also take notice that if an address for service is not filed before the aforesaid date, this appeal is liable to be heard and decided as if you had made an appearance".Insert the following Forms as 6-A and 6-B in Appendix G to the First Schedule of the Code of Civil Procedure:-No. 6-ANOTICE TO RESPONDENT[41-A, Rule 2](Cause Title)Appeal from the ..... of the Court of ..... dated the ..... day of ..... 20.....ToRespondentTake notice that an appeal from the above decree (order) has been presented by theabove-named appellant and registered in this Court, and that if you intend to defend the same you must enter an appearance in this Court and give notice thereof to the appellant or his pleader within 30 days after the service of this notice on you.If no appearance is entered on your behalf by yourself, your pleader or some one by law authorised,tgact for you in this appeal, it will be heard and decided in your absence.The address for service of the appellant is that of his pleader. Mr. A.B. of (insert address), Madras.(If the appellant appears in person, insert his address for service).Given under my hand and the seal of the Court, this ..... day of ..... 20 .....Registrar(Interlocutory application No ..... of 20.. ... has been made by appellant, and execution has been stayed (or other orderade~hy..ur r ated the ..... day of ..... 20....No. 6-BMEMORANDUM OF APPEARANCE[41-A, Rule 3](Cause Title)Take notice that the ..... respondent intends to appear and defend the above appeal, and that his address for service of all notices and process is (insert address).The said respondent requires a list of the papers which the appellant proposes to translate and print.Dated this ..... day of ..... 20 .....(Signed)C.D.Vakil for Respondent.ToThe Registrar, High Court of Judicature, Madras." (18-10-1917).No. 7Notice to a Party to a Suit not made a Party to the Appeal but Joined by the Court as a Respondent(Order 41, Rule 20)(Title)ToWhereas you were a party in Suit No. .... of ...., in the Court of, ....., and whereas the ..... has perferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal:This is to give you notice that this Court has

directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the ..... day of ..... 20 .., at ... a.m. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence. Given under my hand and the seal of the Court, this. .... day of ..... 20 .. Judge.No.

8Memorandum of Cross Objection(Order 41, Rule 22)(Title)Whereas the ..... has preferred an appeal to the .... Court at ..... from the decree of ..... in Suit No. ... of 20 .., dated the ..... day of ..... 20 .., and whereas notice of the day fixed for hearing the appeal was served on the ..... on the ..... day of ..... 20 .., the ..... files this memorandum of cross objection under rule 22 of Order 41 of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely:-No. 9Decree in Appeal(Order 41, Rule 35)(Title)Appeal No. .... of 20 .. from the decree of the Court of . .... dated the ..... day of ..... 20 .. .Memorandum of

Appeal.Plaintiff.vs.Defendant.The ..... above-named appeal to the ..... Court at ..... from the decree of ..... in the above suit, dated the ..... day of ..... 20 .., for the following reasons, namely:-This appeal coming on for hearing on the ..... day of ..... 20 .., before ..... in the presence of ..... or the appellant and of ..... for the respondent, it is ordered-The costs of this appeal, as detailed below, amounting to Rs. ... are to be paid by ..... The costs of the original suit are to be paid by ..... Given under my hand this ..... day of ..... 20 .. Judge

Plaintiff	Defendant		
		Rs A.P.	Rs. A.P.
1.Stamp for plaint	.....	Stamp for power	.....
2.Do. for power	.....	Do. for petition	.....
3.Do. for exhibit	.....	Pleader's fee	.....
4.Pleader's fee on Rs.	.....	Subsistence for witnesses	.....
5.Subsistence for witness	.....	Service of process	.....
6.Commissioner's fee	.....	Commissioner's fee	.....
7.Service of process	.....		
Total	.....	Total	.....

High Court Amendments.-[Andhra Pradesh].-Same as that of Madras.[Calcutta].-The words from "Memorandum of appeal....." to "following reasons, namely:-" to be omitted.[Gauhati].-Same as that of Calcutta.[Kerala].-Same as in Madra except for the addition of the following item in the particulars of costs on the Respondent's side-"5. Fee for preparation of process."-(9.6.1959).[Madras].-Substitute the following for Form No. 9 in Appendix G :-"No.9DECREE/ORDERIn the Court of thePresent:-Judgeday,.....the.....day of.....20....."

Appeal Suit No.....of20.....

Civil Miscellaneous Appeal Suit

Between:Appellant.andRespondent.On appeal from the Decree/Order of the Court of.....dated the.....day of.....20,....., and made in.....

Original Suit No.....of 20.....

Execution Petition

Interlocutory Application

Between:Plaintiff-Petitioner.andDefendant-Respondent.Particulars of valuation

Rs. A.P.

1.Valuation of Appeal ... ..

2.Do. suit ... ..

DECREE/ORDER :-This appeal coming on this day for hearing having been heard on the .....day of.....20.....,upon perusing the grounds of appeal, the Decree/Order and judgment of the lower Court and the material papers in the case and upon hearing the arguments of Mr.....for the Appellant and of Mr.....for the Respondent, and the appeal having stood over to this day for consideration, this Court doth order and decree that the Decree/Order of the lower Court be and hereby is confirmed and this appeal dismissed.....This Court doth further order and decree that the Appellant ( )...do pay to the Respondent ( ) Rs.....for.....costs in this appeal and do bear.....own costs of

Rs.Particulars of costs

Appellants	Amount Rs.	Respondents A.P.	Amount Rs. A.P.
1.Stamp on appeal Memo		1.Stamp for power	
2.Stamp on vakalat		2.Stamp for petition	
3.Stamp on copies of lower Court decree/order and judgment including copying fee		3.Service of processes	
4.Stamp on petitions		4.Pleader's fee on Rs.	
5.Process fee			
6.Fee for preparation of process			
7.Pleader's fee on Rs.			

Total

Total

|||||

Given under my hand and the seal of the Court, this.....day of.....20.....COURT Judge

Appeal Suit No.....of 20.....

Civil Miscellaneous

Appeal Suit

DECREE/ORDER(P.Dis.No. 62/66) (23.2.1966)[Orissa].Same as that of Patna.[Patna].In the schedule of costs in the Form No. 9 and add "copying or typing charges" below the item" Pleader's Free on Rs....."in the columns of Appellant and Respondent, and number the new entry in the first column as "5".No. 10Application to Appeal in IN forma pauperis(Order 44, Rule 1)(Title)I . . . . .

. the . . . . . above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper. Annexed is a full and true schedule of all the movable and immovable property belonging to me with the estimated value thereof. Dated the . . . . . day of . . . . . 20 . . . (Signed) [Note.-Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.] No. 11 Notice of Appeal In Biforma pauperis (Order 44, Rule 1) (Title) Whereas the above-named . . . . . has applied to be allowed to appeal as a pauper from the decree in the above suit dated the . . . . . day of . . . . . 20 . . . and whereas the . . . . . day of . . . . . 20 . . . , has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . Judge. No. 12 Notice to Show Cause why a Certificate of Appeal to the Supreme Court should not be Granted (Order 43, Rule 3.) (Title) To [Take notice that . . . . . has applied to this Court for a certificate-(i) that the case involves a substantial question of law of general importance, and (ii) that in the opinion of this Court the said question needs to be decided by the Supreme Court.] [Substituted by Act No. 49 of 1973, for the former paragraph.] The . . . . . day of . . . . . 20 . . . is fixed for you to show cause why the Court should not grant the certificate asked for. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . Registrar. High Court

Amendment-[Allahabad].-For Form No. 12, substitute the following:- No. 12 NOTICE TO SHOW CAUSE WHY APPEAL TO THE SUPREME COURT SHOULD NOT BE GRANTED [Order 45 Rule 3] IN THE HIGH COURT OF JUDICATURE AT MADRAS Supreme Court Petition No. . . . . of 20 . . . . . Petitioner. Respondent. Respondents. To Take notice that the above petitioner No . . . . . of . . . . . on the file of this Court having presented the above petition praying for a certificate under Article 132 (1)/133(1) of the Constitution of India to enable to appeal to the Supreme Court of India from the decree passed in the said appeal the . . . . . day of . . . . . next has been fixed for hearing the said petition and that you are hereby summoned to appear either in person or by advocate on the said day to show cause why the certificate applied for should not be granted. (By order of the Court) Madras

. . . . . 20 . . . Sub-Assistant Reg. App. Side" (10-10-1958). High Court Amendments-Form Nos. 12-A, 12-B, 12-C and 12-D. [Andhra Pradesh].-Forms 12-A, 12-B and 12-C, as in Madras, Add Form 12-D :- "No. 12-DCERTIFICATE OF LEAVE TO APPEAL TO THE SUPREME COURT UNDER ORDER 45, RULE 7 (In cases where leave is granted under Article 132(1) of the Constitution) Read petition presented under Order 45, Rule 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to the Supreme Court against the decree/final order of this Court in Suit No. . . . . of 20 . . . . . The petition coming on for hearing upon perusing the petition and the grounds of appeal to the Supreme Court and other papers material to the application and upon hearing the arguments of . . . . . for the petitioner and of . . . . . for the respondent (if he appears) this Court doth certify, that the decree/final order appealed from involves a substantial question of law as to the interpretation of the Constitution of India. (1) . . . . . (2) . . . . . (9.8.1957). [Kerala].-Form 12-A, 12-B and 12-C, as in Madras.- (9-6-1959) [Madras].-Insert the following as new Forms after Form No. 12:- "No. 12-ACERTIFICATE OF LEAVE APPEAL TO THE SUPREME COURT [Order 45

Rule 7](In cases where the subject-matter of the appeal is of sufficient value and the finding of the Courts are not concurrent.)Read petition presented under Order 45 Rule 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to the Supreme Court against the decree/final order of this Court in ..... Suit No ..... of 20 .....The petition coming on for hearing upon perusing the petition and the grounds of appeal to the Supreme Court and the other papers material to the application and upon hearing the arguments of ..... for the petitioner and of ..... for the respondent (if he appears) this Court doth certify that the amount/value of the subject-matter of the suit in the Court of first instance is Rs. 20,000/(upwards of Rs. 20,000) and the amount/value of the subject matter in dispute on appeal to the Supreme Court is also of the value of Rs. 20,000/( upwards of Rs. 20,000)or that the decree/(final order) appealed from does not affirm the decision of the lower Court."No. 12-BCERTIFICATE OF LEAVE OF APPEAL THE SUPREME COURT[Order 45, Rule 7](In cases where the subject-matter is of sufficient value and the findings of the Court are concurrent).Read petition presented under o. XLV, Rule 3 of the Code of Civil Procedure, praying for a grant of a certificate to enable the petitioner to appeal to the Supreme Court against the decree/final order of this Courtin Suit No ..... of 20 .....The petition coming on for hearing upon perusing the petition and the grounds of appeal to the Supreme Court and other papers material to the application and upon hearing the arguments of ..... for the petitioner and of ..... for the respondent (if he appears) this Court doth certify that the amount/value of the subject-matter of the suit in the Court of first instance is (Rs. 20,000)/upwards of Rs. 20,000 and the amount/value of the subject-matter in dispute on appeal to the Supreme Court is also of the value of Rs. 20,000/(upwards of Rs. 20,000) or that the decree/final order appealed against involves directly/indirectly some claim or question to/respecting property of the value of Rs. 20,000/(upwards of Rs. 20,000) and that the affirming decree/final order appealed from involves the following substantial question(2) of law, viz.-(1)- --(2)No. 12-CCERTIFICATE OF LEAVE TO APPEAL TO THE SUPREME COURT[Order 45 Rule 7](In cases where the subject-matter in dispute is either not of sufficient value or is incapable of money valuation).Read petition presented under o. XLV, Rule 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to the Supreme Court against the decree/(final order) of this Courtin ..... Suit No..... of ..... 20 .....The petition coming on for hearing upon perusing the petition and the grounds of appeal to the Supreme Court and other papers material to the application and upon hearing the arguments of ..... for the petitioner and of ..... for the respondent (if he appears) this Court cloth certify that the amount/value of the subject-matter of the suit both in the Court of first instance and in this Court is (below Rs. 20,000 in value)/(incapable of money-valuation) this Court in the exercise of the discretion vested in it is satisfied that the case is a fit one for appeal to the Supreme Court for the reasons set forth below, viz.:(1)(2)No. 13Notice to Respondent of Admission of Appeal to the Supreme Court(Order 45, Rule 8.)(Title)ToWhereas ..... , the ..... in the above case, has furnished the security and made the deposit required by Order 45, rule 7, of the Code of Civil Procedure, 1908;Take notice that the appeal of the said ..... to the Supreme Court has been admitted on the ..... day of .... 20 ... .Given under my hand and the seal of the Court, this ..... day of ..... 20 ... .Registrar.No. 14Notice to Show Cause Why a Review should not be Granted(Order 47, Rule 4.)(Title)ToTake notice that ..... has applied to this Court for a review of its decree passed on the ..... day of ..... 20 ... .

fixed for you to show cause why the Court should not grant a review of its decree in this case. Given under my hand and the seal of the Court, this ..... day of ..... 20 ... Judge.

## APPENDIX – H

**MISCELLANEOUS** No. 1 Agreement of Parties as to Issues to be Tried (Order 14, Rule 6) (Title) Whereas we, the parties in the above suit, are agreed as to the question of fact [or of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the ..... day of ..... 20 ... and filed as Exhibit ..... in the said suit, is or is not beyond the statute of limitation (or state the point at issue whatever it may be): We therefore severally bind ourselves that, upon the finding of the Court in the negative [or affirmative] of such issue, ..... will pay to the said ..... the sum of Rupees ..... (or such sum as the Court shall hold to be due thereon), and I, the said ....., will accept the said sum of Rupees ..... (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [or that upon such finding I, the said ....., will do or abstain from doing, etc., etc.] Plaintiff vs. Defendant. Witnesses :- (1) (2) Dated the ..... day of ..... 20 ... **No. 2** Notice of Application for the Transfer of a Suit to Another Court for Trial (Section 24) In the Court of the District Judge of ..... No. .... of 20 ... , To Whereas an application, dated the ..... day of ..... 20 ... , has been made to this Court by ..... the ..... in Suit No. .... of 20 ... now pending in the Court of the ..... at ....., in which ..... is .... plaintiff and ..... is defendant, for the transfer of the suit for trial to the Court of the ..... at ..... You are hereby informed that the ..... day of ..... 20 ... , has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it. Given under my hand and the seal of the Court, this ..... day of ..... 20 ... , Judge. [No. 2-A] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] List of Witnesses Proposed to be Called by Plaintiff/Defendant (Order 16 Rule 1.)

Name of the party which proposes to call the witness	Name and address of the witness	Remarks
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**No. 3 Notice of Payment into Court** (Order 24, Rule 2) (Title) Take notice that the defendant has paid into Court Rs. .... and says that that sum is sufficient to satisfy the plaintiff's claim in full. X.Y., Pleader for the defendant. To Z., Pleader for the plaintiff. **No. 4** Notice to Show Cause (General Form) (Title) To Whereas the above-named ..... has made application to this Court that ..... ; ..... You are hereby warned to appear in this Court in person or by a pleader duly instructed on the ..... day of ..... 20 ... , at ..... O'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined ex parte. Given under my hand and the seal of the Court, this ..... day of ..... 20 ... Judge. High Court Amendment-[Allahabad].-Substitute the following for Form No. 4:- "No. 4 NOTICE TO SHOW CAUSE (GENERAL FORM) In the Court

of.....at.....District.Civil Suit No.....of.....20.....Miscellaneous  
 No.....of.....20.....resident  
 of.....versus.....resident of.....ToWhere as the  
 above-named.....has made application to this Court that .....; you are hereby warned to appear in  
 this Court in person or by a pleader duly instructed on the .....day of.....20...,at.....o'clock in the  
 forenoon, to show cause against the application failing wherein, the said application will be heard  
 and determined ex parte, and it will be presumed that you consent to be appointed guardian for the  
 suit.Given under my hand and the seal of the Court, this.....day of.....20...judge."**No. 5**List of  
 Documents Produced by Plaintiff/Defendant(Order 13, Rule 1)(Title){|-| No.| Description of  
 document| Date, if any, which the document bears| Signature of party or pleader|-| 1| 2| 3|  
 4|-||||-||||-||||}**No.5**LIST OF DOCUMENT PRODUCED BY PLAINTIFF/DEFENDANT(Order  
 13, Rule 1)In the Court of .....at.....District.....Suit No.....of  
 20.....PlaintiffversusDefendantList of documents produced with the plaint (or at first hearing)  
 on behalf of plaintiff (or defendant).This list was filed by.....this.....day of.....20.....

Serial number.	Description and date, if any, of the document	What became of the document.	Remarks
(1)	(2)	(3)	(4)
		If rejected, date of If brought on the record the exhibit marks put on the document.	If it remains on the record after decision of the case and is enclosed in an envelope, under rule 24, Chapter III, the date of enclosure in the envelope.

||||

Signature of party or pleader producing the list."(28.11.1914).**No. 6**Notice to Parties of the Day  
 Fixed for Examination of a Witness about to Leave the Jurisdiction(Order 18, Rule  
 16.)(Title)ToPlaintiff (or defendant)Whereas in the above suit application has been made to the  
 Court by ..... that the examination of ..... , a witness required by the  
 said ..... , in the said suit may be taken immediately; and it has been shown to the  
 Court's satisfaction that the said witness is about to leave the Court's jurisdiction (or any other good  
 and sufficient cause to be stated):Take notice that the examination of the said witness. ....  
 ... will be taken by the Court on the ..... day of ..... 20 ... Dated the .....  
 day of ..... 20 ... Judge.**No. 7Commission to Examine Absent Witness**(Order 26,  
 Rules 4, 18)(Title)ToWhereas the evidence of ..... is required by the ..... in the  
 above suit; and whereas ..... ; you are requested to take the evidence on interrogatories  
 [or viva voce] of such witness ..... and you are hereby appointed Commissioner for that  
 purpose. The evidence will be taken in the presence of the parties of their agents if in attendance,  
 who will be at liberty to question the witness on the points specified, and you are further requested  
 to make return of such evidence as soon as it may be taken.Process to compel the attendance of the  
 witness will be issued by any Court having jurisdiction on your application.A sum of Rs. .... ,  
 being your fee in the above, is herewith forwarded.Given under my hand and the seal of the Court,  
 this ..... day of ..... 20 ... Judge.High Court Amendments-[Orissa].-Same as that of

Patna.[Patna].-Add the following note at the foot of the Form No. 7 :-"Note.-The Commissioner has power under Chapter X of the Indian Evidence Act to control the examination of witnesses."**No. 8**Letter of Request(Order 26, Rule 5)(Title)(Heading :-To the President and Judges of, etc., etc.,or as the case may be.)Whereas a suit is now pending in the . . . . . in whichA. B. is plaintiff andC. D. is defendant; And in the said suit the plaintiff claims.(Abstract of claim.)And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say :E. F of.....G. H of.....andI.J.of .....And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;Now I . . . . . , as the . . . . . of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said . . . . . or some one or more of you, will be pleased to summon the said witness(and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or viva voce) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.(Note-If the request is directed to a Foreign Court, the words "through the Ministry of External Affairs of the Government of India for transmission" should be inserted after the words "other witnesses" in the last line of this form.)**No. 9**Commission for a Local Investigation, or to Examine Accounts(Order 26, Rules 9, 11)(Title)ToWhereas it is deemed requisite, for the purposes of this suit, that a commission for . . . . . should be issued;You are hereby appointed Commissioner for the purpose of . . . . . .Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court have jurisdiction on your application.A sum of Rs. . . . . , being your fee in the above, is herewith forwarded.Given under my hand and the seal of the Court, this . . . . . day of . . . . . . . . . . 20 . . . . .Judge.**No. 10**Commission to Make a Partition(Order 26, Rule 13)(Title)ToWhereas it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the . . . . . day of . . . . . 20 . . . . .; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.Process to compel the attendance before you of any witness or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court



having jurisdiction on your application. A sum of Rs. . . . . , being your fee in the above, is herewith forwarded. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . Judge. [No. 11] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for Form 11 (w.e.f. 1.2.1977).] Notice to Certificate, Natural, or, De facto Guardian (Order 32, Rule 3) (Title) To (Certificated/Natural/de facto Guardian) Whereas an application has been presented on the part of the plaintiff\*/on behalf of the minor defendant\* in the above suit for the appointment of a guardian for the suit for the minor defendant . . . . . , you (insert the name of the guardian appointed or declared by Court, or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor, the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of the said suit. Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . , Judge.\* Strike off the words which are not applicable. High Court Amendment-[Allahabad].-Substitute the following for Form No. 11:- "No. 11 [Order 32 Rule 3] NOTICE TO MINOR DEFENDANT AND GUARDIAN In the Court of . . . . . at . . . . . District. Suit No . . . . . of . . . . . 20 . . . . Resident of . . . . . Plaintiff. versus Resident of . . . . . Defendant. To (1) Minor defendant (2) and Natural/Certificated guardian, or the person in whose care the minor is alleged to be. Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you said minor, and you 2 . . . . . natural'/certificated guardian or the person in whose care the minor is alleged to be, certificated are hereby required to take notice that unless within . . . . . days from the service upon you of this notice, an application is made to this Court to show cause why the person named below should not be appointed or for the appointment of any other person willing to act as guardian for the suit, the Court will proceed to appoint the person named below or some other person to act as guardian of the minor for the purposes of the said suit. i Proposed guardian . . . . . son of . . . . . resident of . . . . . Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . . . Judge." (27-3-1926). (1) Cut out the word "natural" if the certificated guardian is named; cut out the words "certificated" if the natural guardian be intended and cut out both "natural" and "certificated" and the word "or" if the guardian be of neither class but one with whom the minor lives. (2) Insert the name of guardian. [Andhra Pradesh].-Same as that of Madras. [Bombay].-For the existing Form No. 11, substitute the following as Form No. 11:- "No. 11 NOTICE TO MINOR DEFENDANT AND GUARDIAN (Order 32 Rule 3) (Title) To (1) . . . . . (Natural Guardian/ Leg., lly appointed Guardian/Person taking care of the minor). Whereas an application (as per the annexed copy) has been presented on behalf of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant (here enter the name of the minor defendant) . . . . . and whereas the plaintiff has proposed in his application that you (here enter the name of the proposed guardian) . . . . . should be appointed as such guardian you the said proposed guardian are hereby required to take notice that, unless you appear before this Court within . . . . . days from the service of this notice upon you and express your consent to such appointment, or an application is made to this Court to appoint some other person as guardian of the minor for the suit, the Court will proceed to appoint such person as it

deems proper as the guardian of the minor for the purposes of the said suit. Given under my hand and the seal of this Court, this ..... day of ..... 20 ..... Judge." (1-10-1983 and 1-4-1987). [Karnataka]. - Same as that of Madras. [Madhya Pradesh]. - Substitute the following for Form No. 11: - "No. 11 NOTICE TO MINOR DEFENDANT AND GUARDIAN [Order 32 Rule 4-A] (Title) To Minor Defendant, Legally appointed / Actual guardian, Proposed guardian. Whereas an application has been presented on the part of the plaintiff on behalf of the minor defendant for the appointment of you ..... as the guardian for the suit of the minor defendant ..... (you the said minor\*) you ..... his legally appointed / actual guardian and you ..... the proposed guardian for the suit are hereby required to take notice that unless you, the proposed guardian appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to your appointment, or unless an application is made to this Court for the appointment of some other person to act as guardian of the minor for the suit, the Court will proceed to appoint an officer of the Court or a pleader or some other person to act as a guardian to the minor for the purposes of the said suit of which summons in the ordinary form is here with appended. Given under my hand and the seal of the Court, this ..... day of ..... 20 ..... Judge." (16-9-1960). \*The portion in brackets should be scored out if no notice is issued to the minor defendant. [Madras]. - Substituted the following for Form No. 11 :- **No. 11 NOTICE TO GUARDIAN APPOINTED OR DECLARED, OR TO FATHER OR OTHER NATURAL GUARDIAN, OR TO THE PERSON IN CHARGE OF THE MINOR** [Order 32 Rule 3(5)] (Title) To Guardian appointed or declared, or father or other natural guardian, or person-in-charge of the minor. Whereas an application has been presented on the part of the ..... in the above suit for the appointment of a guardian for the suit of the said minor, you are hereby required to take notice that, unless within ..... days from the service upon you of this notice an application is made to this Court for the appointment of you or of some friend of the said minor to act as her guardian for the purposes of the said suit, the Court will proceed to appoint some other person to act as guardian of the said minor for the purposes of the said suit. Given under my hand and the seal of the Court, this ..... day of ..... 20 ..... Judge. "[Orissa]. - Same as that of Patna. [Patna]. - For Form No. 11 substitute the following Form :- "No. 11 NOTICE TO MINOR DEFENDANT AND GUARDIAN OF APPLICATION FOR APPOINTMENT OF THE GUARDIAN TO BE GUARDIAN FOR THE SUIT (Order 32 Rule 3) (Title) To Minor Defendant, Guardian (appointed by the authority, or natural or the person in whose care the minor is, as the case may be). Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of you\* ..... as guardian for the suit to the minor defendant, you the said minor and you\* ..... are hereby required to take notice that unless within 21 days from the service upon you of this notice you\* ..... give your consent to be appointed to act as guardian, the Court will proceed, subject to the decision of any objection that may be raised to appoint an officer of the Court to act as guardian to you the minor for the said suit. Given under my hand and the seal of the Court, the ..... day of ..... 20 ..... Judge." No. 11 A Notice to Minor Defendant (Order 32, Rule 3) (Title) To Minor Defendant. Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of . . . . . \*as guardian for the suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the . . . . . day of . . . . . 20 . . . . , at . . . . . O'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined ex parte. Given under my

hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . Judge. High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Karnataka].-Same as that of Madras.[Kerala].-Same as that of Madras.[Madras].-Substitute the following for Form No.

11-A:-"No.11-ANOTICE TO PROPOSED GUARDIAN OF A MINOR

DEFENDANT/RESPONDENT[Order 32 Rule 3(9)]To(Y.Z.)(Name, description and place of residence of proposed guardian).Take notice that X plaintiff/defendant has presented a petition to the ..... Court praying that you be appointed guardian ad litem to the minor defendant(s)/respondent(s) and that the same will be heard on the ..... day of ..... 20 .....(2)The affidavit of X has been filed in support of this application.(3)If you are willing to act as guardian for the said defendant (s)/respondent(s) you are requested to sign (or affix your mark to) the declaration on the back of this notice.(4)In the event of your failure to signify your express consent in the manner indicated above take further notice that the Court may proceed under Order 32, rule 3, Code of Civil Procedure, to appoint some other suitable person or one of its officers as guardian ad litem of the minor defendant(s)/respondent(s) aforesaid.Dated this

..... day of ..... 20....(Signed)I hereby acknowledge receipt of a duplicate of this notice and consent to act as guardian of the minor defendant(s)/respondent(s) therein mentioned.Witnesses:(1)Signature.(2)(Y.Z.)[Orissa].-Same as that of Patna.[Patna].-Insert the following Forms Nos. 11-A and 11-B:-No.11-ANOTICE TO MINOR DEFENDANT AND

GUARDIAN OF APPLICATION FOR APPOINTMENT OF ANOTHER PERSON TO BE GUARDIAN FOR THE SUIT[Order 32 Rule 3](Title)ToMinor Defendant,Guardian (appointed by the authority,or natural or the person in whose care the minor is, as the case may be).Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of (1) ..... as guardian for the suit to the minor defendant you the said minor and you (1) ..... are hereby required to take notice that unless within 21 days from the service upon you of this notice you (3) ..... make an application for the appointment of yourself or of some friend of you the minor to act as guardian, the Court will proceed, subject to the decision of any objection that may be raised, to appoint (2) ..... or an officer of the Court to act as guardian to you the minor for the said suit.Given under my hand and the seal of this Court, this ..... day ..... 20 .....Judge.(1)Here insert the name of proposed

guardian.(2)Here insert the name and description of proposed guardian.(3)Here insert name of guardian upon whom the notice is to be served.No. 11-BNOTICE TO THE PROPOSED GUARDIAN FOR THE MINOR DEFENDANT, WHEN THE PERSON PROPOSED IS NOT THE GUARDIAN APPOINTED BY AUTHORITY OF THE NATURAL GUARDIAN OR THE PERSON IN WHOSE CARE THE MINOR IS[ Order 32 Rule 4](Title)DistrictIn the Court of

.....at.....Suit No ..... of 20

.....PlaintiffversusDefendant.ToProposed guardian

.....Whereas an application has been presented by the plaintiff in the above case for the appointment of you (1) ..... as guardian for the suit to the minor defendant, you are hereby required to take notice that unless within ..... days from the service upon you of this notice you make an application to the Court intimating your consent to act as guardian for the suit the Court will proceed to appoint some other person to act as guardian to the minor for the purposes of the said suit.Given under my hand and the seal of this Court, this.....day of.....20....Judge"(1)Here insert name and description of proposed

guardian.**No. 12**Notice to Opposite Party of Day Fixed for Hearing Evidence of Pauperism(Order 33, Rule 6)(Title)ToWhereas . . . . . has applied to this Court for permission to institute a suit against . . . . . in forma pauperis under Order 33 of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas the . . . . . day of . . . . . 20 . . . . has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof :Notice is hereby given to you under rule 6 of Order 33 that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said . . . . . day of . . . . . 20 . . . .Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . .Judge.High Court Amendment-[Karnataka].-Add the following as Form No. 12-A:-"No. 12-ACOMMON FORM OF NOTICE IN INTERLOCUTORY APPLICATIONS UNDER ORDER 37 OF THE CODE OF CIVIL PROCEDURE, 1908(Title)Take notice that the plaintiff/appellant/defendant/respondent above-named has made an application to the Court under . . . . . (Provision of law) praying that . . . . . (set out the prayer in full) and that the pleader on behalf of the applicant will move the Court for an urgent/interim order on . . . . . (date) at . . . . . (time)or that the Court on being moved for an interim order has on . . . . . (date) made such order . . . . . directing . . . . . (here enter the exact terms of the interim order) and has further directed that the application be posted for further orders on . . . . . (date) after notice to you.You are required to appear either in person or through pleader on the said date to show cause against the application being granted . . . . . as prayed for. Please note that in default of your appearing and showing cause as aforesaid, the application will be proceeded with in your absence.The affidavit/ memorandum of facts by . . . . . has been filed in support of the application, and a true copy thereof together with a true copy of the application is annexed hereto.Dated this

. . . . . day of . . . . . 20 . . . . .(Officer of Court). . . . .Pleader/or applicant.(R.O.C. No 2526/1959, dated 9.2.1967).**No. 13**Notice to Surety of his Liability Under a Decree(Section 145)(Title)ToWhereas you . . . . . did on . . . . . become liable as surety for the performance of any decree which might be passed against the said . . . . . defendant in the above suit; and whereas a decree was passed on the . . . . . day of . . . . . 20 . . . . against the said defendant for the payment of . . . . ., and whereas application has been made for execution of the said decree against you :Take notice that you are hereby required on or before the . . . . . day of . . . . . .. 20 . . . . ., to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.Given under my hand and the seal of the Court, this . . . . . day of . . . . . 20 . . . .

..Judge.**No.14**Register of Civil Suits(Order 4, Rule 2)Court of the...of....at...Register of Civil Suits in the year 20.....

Date of Presentation of plaint

Number of suit.

PLAINTIFF

Name

Description

Place of residence

Name	DEFENDANT
Description	
Place of residence	
Particulars	CLAIM
Amount or value.	
When the cause of action accrued	
Day for parties to appear.	APPEARANCE
Plaintiff.	
Defendant.	
Date.	JUDGMENT
For whom.	
For what, or amount.	
Date of decision of appeal.	APPEAL
Judgment in appeal.	
Date of application	EXECUTION
Date of order.	
Against whom.	
For what and amount, if money.	
Amount of costs.	
Amount paid into Court.	RETURN OF EXECUTION
Arrested.	
Minute of other return than payment or arrest, and date of every return.	

Note:-Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register. High Court Amendments-[Andhra Pradesh].-Same as that of Madras.[Bombay].-(i) For the existing Note substitute the following:"Note:-Where there are numerous plaintiffs or numerous defendants, the names of all the plaintiffs or all the defendants, as the case may be, should be entered in the register."-(1-10-1983).(ii)in Form No.14.(a)Each of the columns of Register of Civil Suits shall be numbered as columns (1) to (10).(b)In column 5 as so renumbered, under the heading "claim" in the sub-column for the word "Particulars" the words "Nature of suit and particulars of relief" shall be substituted;(c)In column 6 as so renumbered, under the heading "Appearance" for sub-columns "Day for parties to appear", "Plaintiff" and "Defendant" the following shall be substituted, namely : "The first returnable date when the defendant is called upon to appear"-(31-12-1987).[Calcutta].-(i) Cancel columns 20 to 27 of Form No. 14-Register of Civil Suits, Appendix II, Schedule I and substitute therefor the following columns:

20	Number of execution application as per execution application register and the date of application	EXECUTION
21	Relief sought, if money, amount claimed.	

- 22 Order and date thereof. If portion of relief not granted, what portion
- 23 Against whom order made.
- 24 For what, amount to be stated.

25 Amount of costs.

## RETURNS OF EXECUTIONS

26 Adjustment and satisfaction reported, if any.

27 Amount paid into court.

28 Person arrested.

29 Whether judgment-debtor committed to jail, if not, why not. If committed to jail, the period of stay in it.

30 Minute of other return other than arrest and payment.

31 Amount or relief still due and why execution petition is closed.

32 If petition is infructuous, why and to what extent.

33 Appeal, if any, against order in execution and if so, the result.

(ii) Substitute the following Notes for the existing one: "NOTE 1.-When there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only as the case may be, need be entered in Register with a note of the total number of parties impleaded, e.g., A.B., and seven others. NOTE 2.-In column 9 enter facts constituting the cause of action and particulars required by Order 7, rule 1, clauses (g) and (h) and also the value of the suit for the purpose of jurisdiction as required by clause (1) of that rule. NOTE 3.-In column 12 shall be entered the first date of hearing of the suit and in columns 13 and 14 the names of the pleaders or vakils or advocates of the parties. NOTE 4.-In column 16 should be indicated whether the decision was ex parte, on compromise or on contest against all or any of the defendants. NOTE 5.-In columns 18 and 19 should also be the number and year of the appeal, the name of the Appellate Court and not only the particulars of the order on first appeal but the particulars of the order on second appeal or revision, if any. NOTE 6.-Cases remanded under order 41, rule 23 or restored to file under Order 9, rule 4 or rule 9 or rule 13 will be re-admitted and entered in the Register in their Original Numbers. In each case the letter "R" will be affixed to the number to be entered in column 2 and the date of restoration to file will be noted in column 1. NOTE 7.-Cases under the Religion Endowments Act, 1863, under sections 88 and 92, Order 21, rule 99, Order 36, rule 3 and Schedule 11, Paragraphs 17 and 20, Civil Procedure (now the reference to Schedule II will be construed as references to the appropriate provisions of the Indian Arbitration Act (X of 1940) which has repealed Schedule II) and references made under section 5 of the Bengal Alluvial Lands Act, 1920, must be registered as suits. NOTE 8.-A note should be made of all parties brought on or struck off the record under Order 1, or Order 22, Civil Procedure Code, or of any alteration in the appointment of guardian ad litem and also of any withdrawal : )f the claim or a portion of the claim against any of the defendants. NOTE 9.-Any amendment or alteration made during the progress of the suit in the value or particulars of the claim or as to the date or place or cause of action should appear in column 9. NOTE 10.-Courts to which suits are transferred should not be old members and the dates of institution in the suit registers within brackets. NOTE 11.-When the Court of execution is other than the Court which passed the decree, the name of the executing Court should be entered in column 20. NOTE 12.-In column 22 the date of the final order is to be entered. NOTE 13.-In column 26 the particulars and the date of

adjustment, or satisfaction otherwise than by execution should be entered. NOTE 14.-In column 33 should be entered the order in appeals, revisions or under section 144, Civil Procedure Code, with date and name of Court. NOTE 15. The entries in this register shall be made contemporaneously with the passing the orders during the progress of the suits or subsequent proceeding, if any, and not after their final disposal. Separate Registers in this form have been prescribed for Title Suits and Money and Moveable Suits "[ (R.) 1(i) and (R.) 1 (ii) ]". Note:-Where there are numerous plaintiffs or numerous defendants the first plaintiff only or the first defendant only, as the case may be, need be entered in the register. [Gauhati].-Same as that of Calcutta [Madras].-Form Nos. 14 to 25, omitted. [Orissa].-Same as that of Patna. [Patna].-Substitute the following for Form No. 14: **No. 14 Register of Civil Suits** (Order 4, Rule 2) Court of the....of....at... Register of Civil Suits in the year 20.....

1	Date of presentation of plaint	
2	Serial number of suit.	Number of suit
3	Serial number of suit dealt with under the S.C.C. Power	
4	Name	Plaintiff
5	Description	
6	Place of residence	
7	Name	Defendant
8	Description	
9	Place of residence	
10	Particulars	Claim
11	Amount or value	
12	When the cause of action accrued	
13	Date	Judgment
14	For whom	
15	For what or amount	
16	Number of year of appeal	Appeal
17	Order on appeal with date and name of appellate Court	
18	Particulars	Adjustment or satisfaction of decree otherwise then by execution
19	Date	
20	Number and date of application	
21	Date of final order	Execution
22	Against whom.	
23	For what, and amount, if money	
24	Amount of costs	
25	Amount paid into Court.	Result of execution
26	Name of person, if any, detained in civil prison	

27 Minute of other result with date

28 Orders in appeals, revisions, or under Section 144 C.P.

Code, with date and name of Court

29 Relief or amount still due

30 Remarks

NOTE 1.-Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register. NOTE

2.-Cases remanded by appellate Courts to lower Courts under Order 41, rule 23, Civil Procedure Code, will be re-admitted and entered in the general register of suit, under their original numbers.

In each case the letter R will be affixed to the number to be entered in column 2. NOTE 3.-In column 14 should be indicated whether the decision was ex parte, on compromise or on contest against all or any of the defendants. NOTE 4.-When the Court of execution is other than the Court which passed the decree, the name of the executing Court should be given in column

20."-(20.2.1980). **No. 15 Register of Appeals** COURT (OR HIGH COURT) AT REGISTER OF APPEALS FROM DECREES IN THE YEAR 19 .....|-|| Name| Respondent|-|| Description|-|| Place of residence|-|| Of What court| Decree appealed from|-|| Number of Original suit|-|| Particulars|-|| Amount or value|-|| Day for parties to appear| Appearance|-|| Appellant|-|| Respondent|-|| Date| Judgment|-|| Confirmed, reserved or varied|-|| For what, or amount|-||} High Court

Amendment-[Bombay].-In Form No. 15, in the Register of Appeals:-(i)each of the columns shall be numbered as (1) to (7);(ii)in column 3 so re-numbered under the heading "Decree appealed from", for sub-column "Particulars" the words "Nature of the original suit and particulars of relief therein" shall be substituted.(iii)in column 4 so re-numbered, under the heading "Appearance" for all the sub-columns, the sub-column "The First returnable date when the respondent is called upon to appear" shall be substituted:-(31.12.1987). Form Nos. 16 to 19 High Court

Amendment.-[Allahabad].-Add the following Form Nos. 16 to 19:-"No. 16 The security to be furnished under Order 25, Rule 1, shall be, as nearly as may be, by bond in the following form: In the Court of ..... at

..... Suit No

..... of ..... 20..... Plaintiff versus Defendant. Whereas a suit has been instituted in the said Court by the said plaintiff ..... to recover from the said defendant ..... the sum of rupees ..... and the said plaintiff ...

.....:..... is residing out of British India (or is a woman) and does not possess any sufficient immovable property within British India independent of the property in the suit :Therefore, I, inhabitant of ..... have voluntarily become security, and do hereby bind myself, my heirs, and executors to ..... as Judge of the said Court and to his successors in office that the said plaintiff ..... his heirs and executors, shall, whenever called on by the said Court, pay all costs that may have been or may be incurred by the said defendant ..... in the said suit, and in default of such payment I bind myself, my heirs and executors, to pay all such costs to the said Court on its order. Witness my hand at ..... this ..... day of 20

.....(Signed) Surety. Witnesses : **No. 17 ADDRESS FOR SERVICE** Under Order 7, Rule 19 to 26; Order 8, Rule 11 and 12 ; Order 41, Rule 38; Order 46, Rule 8; Order 47, Rule 10; Order 52, Rule 1. In the Court of the ..... of ..... Original (Suit/or Case) No ..... of 20 ..... Plaintiff versus Defendant. This address shall be



within the local limits of the District Court within which the suit is filed, or of the District Court within which the party ordinarily resides, if within the limits of, United Provinces of Agra and Oudh, but not within the limits of any other Province :

Name, parentage and caste   Residence   Pargana or tahsil   Post office   District

Dated: Any summons, notice or process in the case may, henceforward be issued to me at the above address until I file notice of change. If this address is changed I shall forthwith file a notice of change containing all the new particulars.

Plaintiff

Defendant

Signature of party

Appellant

Respondent

Or I file the above address according to the instructions given by my client (name) ..... (and capacity)..... Signature of pleader. N.B.-This form when received by the Court must be stamped with the date of its receipt and filed with the record of the pending suit or

matter. **No. 18 NOTICE OF CHANGE OF ADDRESS FOR SERVICE** Under Order 7, Rule 19-26; Order 8, Rule 11 and 12; Rule 41, Rule 38; Order 46 Rule 8; Order 47 Rule 10; Order 52, Rule 1 In the Court of the ..... of ..... Original (Suit/(or Case)) No ..... of ..... 20

..... Plaintiff versus Defendant. This address shall be within the local limits of the District Court within which the suit is filed, or of the District Court within which the party ordinarily resides, if within the limits of the United Provinces of Agra and Oudh, but not within the limits of any other Province:

Name, parentage and caste   Residence   Pargana or tahsil   Post office   District

Dated : Any summons, notice or process in the case may, henceforward be issued to me at the above address until I file notice of change. If this address is again changed I shall forthwith file a notice of change containing all the new particulars.

Plaintiff

Defendant

Signature of party

Appellant

Respondent

Or I file the above address according to the instruction given by my client (name) ..... (and capacity)..... Signature of pleader. N.B.-This form when received by the Court must be stamped with the date of its receipt and filed with the record of the pending suit or

matter. **No. 19 VAKALATNAMA** In the Court of ..... Suit/Miscellaneous Case/Civil Appeal/ Execution Case No ..... of 20...., fixed for ..... Plaintiff/Appellant/Applicant/D.H.versusDefendant/Respondent/Opposite Party/J.D. Vakalatnama of Plaintiff/Appellant Applicant/D.H./Defendant/Respondent/Opposite party/J.D. In the case noted above Sri ..... each of Sarvasri ..... Advocate, is hereby appointed as counsel, to appear, plead and act on behalf of the undersigned, in any manner, he thinks it proper, either himself or through any other Advocate, and in particular to do the following, namely, to receive any process of Court (including any notice from any appellate or revisional Court), to file any applications, petitions or pleadings, to file, produce or receive back any documents, to withdraw or compromise the proceedings, to refer any matter to arbitration, to deposit or withdraw any moneys, to execute any decree or order, to certify payment, and receive any moneys due under such decree or order. The undersigned shall be bound by all whatsoever may be done in the aforesaid case (including any appeal or revision therefrom) for and on behalf of the undersigned by any of the said counsel. Signature ..... Name in full ..... Date ..... Attesting witness ..... Name in full ..... Address ..... Date ..... Accepted /Accepted on the strength of the signatures of the attesting witness. THE SECOND SCHEDULE ARBITRATION [Repealed by the Arbitration Act, 1940 (10 of 1940), section 49 and Schedule III] THE THIRD SCHEDULE. -[Execution of Decrees by Collectors.] Omitted by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), section 15. THE FOURTH SCHEDULE. -[Enactments amended.] [Repealed by the Repealing and Amending Act, 1952 (48 of 1952), section 2 and Schedule I.] THE FIFTH SCHEDULE. -[Enactments repealed.] [Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914), section 3 and Schedule II].