

*JAMMU & KASHMIR HIGH COURT RULES, 1999

*[Rules issued vide High Court of Jammu and Kashmir's
Notification No. 39, Dated: 22-04-1999]

In exercise of the powers conferred by Section 102 of the Constitution of Jammu and Kashmir read with Section 67 of the Jammu and Kashmir Constitution Act, 1996 (XIV of 1996), Section 122 of the Code of Civil Procedure, Samvat 1977 (X of 1977), Section 8 of the Jammu and Kashmir State Civil Courts, Act, Samvat 1977 and Clause 26 of the Letters Patents (Jammu and Kashmir) and all other powers enabling it in this behalf, the High Court of Jammu and Kashmir with the previous approval of the Governor, hereby makes the following rules, namely :—

CHAPTER—I PRELIMINARY

1. Short title, commencement and application.— (1) These rules may be called the Jammu and Kashmir High Court Rules, 1999.

(2) These shall come into force on such date as the Chief Justice, may by Notification in the Government Gazette, appoint and different dates may be appointed for different provisions of these rules.

(3) They shall apply to all proceedings and matters in the High Court commenced on and after the said date and shall also apply as far as may be practicable, to all proceedings taken on and after the said date in all cases and matters then pending in the High Court.

SHORT NOTES

Date of enforcement of Rules: High Court of Jammu & Kashmir vide its Notification No. 156 dated: 23-06-1999 appointed 23rd June, 1999 as the date on which these rules came into force in the State.

2. Repeal and Saving.— (1) The Jammu and Kashmir High Court Rules, 1975 and all other existing rules and orders dealing with the matters covered by these rules, are hereby repealed.

(2) Notwithstanding such repeal, nothing contained in these rules shall affect the previous operation of the said rules or any thing done, any action taken or any order made under the said rules.

3. Interpretation.— (1) In these rules, unless the subject or context otherwise requires.—

- (a) 'Advocate' means a person whose name is entered on the roll of advocates prepared and maintained by a State Bar Council under the Advocate's Act, 1961.
 - (b) 'Bench' means a Bench of Judges and shall include Single Judge in relation to matters which can be disposed of by a Single Judge.
 - (c) 'Certified Copy' shall have the same meaning as is assigned to it in Section 76 of the Jammu and Kashmir Evidence Act, 1977 (XII of 1977).
 - (d) 'Chief Justice' means the Chief Justice of Jammu and Kashmir, and in his absence the acting Chief Justice of the Court.
 - (e) 'Code' means the Code of Civil Procedure, 1977 (X of 1977) in relation to Civil matters and the Code of Criminal Procedure, 1989 (XXIII of 1989) in relation to criminal matters.
 - (f) 'Constitution' means the Constitution of Jammu and Kashmir, 1956.
 - (g) 'Constitution of India' means the Constitution of India as applicable to the State of Jammu and Kashmir.
 - (h) 'Court' means the High Court of Jammu and Kashmir and includes a Bench thereof consisting of one or more Judges.
 - (i) 'Dead Case' means a case which for any reason has become infructuous.
 - (j) 'Division Bench' means a Bench of two Judges.
 - (k) 'Governor' means the Governor of the State of Jammu and Kashmir.
 - (l) 'Judge' means a Judge of the Court.
 - (m) 'Registrar' means the Registrar General of the High Court and includes the Registrar Judicial, Deputy Registrar or an Assistant Registrar of the High Court, in relation to powers, duties or functions exercised or performed by the Registrar Judicial, Deputy Registrar or the Assistant Registrar as the case may be under these Rules.
 - (n) 'Registry' means the Registry of the Court.
 - (o) 'State' means the State of Jammu and Kashmir.
 - (p) 'Supreme Court' means the Supreme Court of India.
 - (q) 'Supreme Court Rules' means the Rules of the Supreme Court for the time being in force.
- (2) The General Clauses Act, 1977 (XX of 1977) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act.

SHORT NOTES

"Court"— meaning of: In case *Dr. B.N. Raina v. Professor Maser-ul-Haq* it is contended that 'it is the Division Bench which alone has the jurisdiction to punish for contempt. Held, 'the argument is valid only so far as the criminal contempt is concerned. Such proceedings of criminal contempt are squarely covered by Chapter V (Rule-14) of J&K High Court Rules, 1975, and a Division Bench alone will have the jurisdiction to initiate such contempt proceedings against those who scandalize authority of any Court or interfere in the administration of justice. It is, however wrong to contend that the power to punish for civil contempt is also vested in the Division Bench of the Court only which is nothing but in the nature of an execution proceedings. With regard to the argument that a Court means "Full Court", is utterly misconceived because under Rule 3 of High Court Rules, the Court has been defined which means and includes a bench of one or more judges and thus a complete answer to the challenge on this count.' It is well settled that Criminal contempt is distinct from civil contempt.

- *Dr. B.N. Raina v. Professor Maser-ul-Haq & Ors, 1990 KLT 170 : 1989 SLJ 594.*

4. In the event of dispute as to interpretation, decision of Chief Justice will be final.— In the event of any dispute arising as to the interpretation/application of these Rules, the decision of the Chief Justice or Judge(s) so authorised by the Chief Justice shall be final.

***5. Power of Chief Justice to issue orders/instructions to supplement Rules.—** (i) The Chief Justice shall issue appropriate orders/instructions to supplement these rules relating to subjects or matters provided for in these rules for the proper discharge of functions of the Court.

(ii) Chief Justice shall have the residuary power to issue orders, directions or guidelines on the matters not specifically provided for or dealt with by these rules, pertaining to the procedure of the Court or the Registry or to carry out the purpose of these Rules.

*[Hon'ble Chief Justice has been pleased to issue the directions/guidelines in the shape of scheme to regulate the procedure of the administrative work in the Registry of the High Court vide Circular No. 6, dated: 13-02-1998 and Order No. 453 Dated: 02-09-1999 (See at page No. 333 and 363 of this book.)]

6. Steps required to be taken if any, in connection with any cause, appeal etc.— Where by these Rules or by any order of the Court, any step is required to be taken in connection with any cause, appeal or matter before the Court, that step shall, unless the context otherwise requires, be taken in the Registry.

7. Computation of time.— Where any particular number of days is prescribed by these rules or is fixed by an order of the Court, in computing the same, the days from which the said period is to be

reckoned shall be excluded and, if the last day expires on a day when the Registry is closed, that day and any succeeding day on which the Court remain closed shall also be excluded.

8. Communication of orders.— Every order of the Court shall be communicated to the concerned in such a manner as may be directed by the Chief Justice or concerned Bench.

CHAPTER-II

SITTINGS AND VACATIONS ETC.

9. Timing for opening and closing of Registry.— Timings for the opening and closing of the Registry shall be fixed by the Chief Justice.

10. Length of vacation and number of holidays.— (1) The length of the vacations of the Court and the number of holidays for the Court and the Registry shall be such as may be fixed by the Chief Justice and notified by the Registrar. The Chief Justice may also fix such days during vacations as shall be no work period for the Court.

(2) The Chief Justice may permit the officers and officials of the Registry to avail one week vacation, during the vacation, in a calendar year.

11. Court shall not sit on holiday unless asked to do so.— The Court shall not ordinarily sit on the days notified as Court holidays unless otherwise directed by the Chief Justice.

12. Appointment of vacation judge(s) for either Wing.— The Chief Justice may appoint one or more Judges for either wing of the Court to hear during vacations all matters of an urgent nature.

13. Judges appointed shall have the appellate/revisional jurisdiction.— Subject to other provisions contained in these Rules, the Judges so appointed may, save where any enactment requires a case to be heard by a Bench of two or more Judges, exercise in all cases extraordinary original, appellate or revisional jurisdiction vested in the Court including jurisdiction to try Election Petitions under the Jammu and Kashmir Representation of the People Act, 1957.

Provided that in the absence of the Chief Justice, the Senior Judge where there are more than one vacation Judges, and where there is only one vacation Judge, such Judge, shall exercise the powers of the Chief Justice under Rule 23 for the Wing of the Court for which he has been so appointed.

CHAPTER-III

OFFICERS OF THE COURT

14. Function assigned and custody of Court record.— The Registrar shall have the custody of the records of the Court and shall

exercise other functions as are assigned to him by these Rules or may be assigned to him by the Chief Justice.

15. Powers and functions of the Registrar.— The powers of the Court in relation to the following matters under its original and extraordinary jurisdiction may be exercised by the Registrar.—

A. JUDICIAL.

(a) *Civil.*

- (i) To receive plaint, petition, appeal or any other application, issue notice or fix date for the filing of the written statement or objections, Counter etc. in a proceeding under the original or extraordinary jurisdiction of the Court or as may be directed by the Court;
- (ii) To transfer all suits for recovery of money to the competent subordinate courts;
- (iii) Applications to amend the plaint, petition or subsequent proceedings where the amendment sought is formal. Where the plaint, petition or subsequent proceedings have not been placed before the court the Registrar may entertain and dispose of application for all types of amendments;
- (iv) Applications for issuance of commissions to examine witnesses;
- (v) Attachment of property of absconding witnesses;
- (vi) Applications for leave of the Court to file a plaint when such leave is necessary;
- (vii) Applications under Order I Rule 8 (i) of the Code for leave to sue or defend on behalf of or for the benefit of all having the same interest;
- (viii) Applications for the admission or appointment of a next friend or guardian *ad litem* of a minor or a person of unsound minor next friends or guardians *ad litem*;
- (ix) Applications for fresh summons or notice and for short date summons and notice;
- (x) Applications for orders regarding issue of summons or notices and regarding service thereof;
- (xi) Applications for orders for substituted service or summons or notice;
- (xii) Applications for transmission of process for service to another course;

- (xiii) Applications for permission to withdraw any suit, petition or an application except public interest litigation;
- (xiv) Application for leave to file further or additional written statements, objections, counter etc;
- (xv) Applications for return of documents under O. XIII Rule 9(i) of the Code; and applications for return of exhibits;
- (xvi) Applications for orders for discovery and for orders concerning admission, production and inspection of documents;
- (xvii) Applications for leave to deliver interrogatories;
- (xviii) Applications for orders for the transmission of a decree with prescribed certificate, etc.;
- (xix) Applications for the execution of a document or for the endorsement of a negotiable instrument under O. XXI Rule 34 of the Code;
- (xx) Applications for examination of judgment debtors as to his property under O. XX Rule 41 of the Code;
- (xxi) Applications for discharge from custody for the non-payment of subsistence money;
- (xxii) Applications falling under section 152 of the Code;
- (xxiii) Application for leave under O. XXI, Rule 50, sub-rule (2) of the Code, except where liability is disputed;
- (xxiv) Applications for the issue of proclamations of sale under rule 66 and for direction as to the publication thereof under Rule 67 of O. XXI of the Code;
- (xxv) Applications for possession under O. XXI Rules 95 and 96 of the Code;
- (xxvi) Applications for special direction to the officer concerned as to the service or execution of any process of the Court;
- (xxvii) Applications for orders for withdrawal of attachment or for return of a warrant;
- (xxviii) Applications for orders for payment of money realized in execution or otherwise deposited in court including uncontested applications to share the assets realized under section 73 of the Code;
- (xxix) Summoning witnesses and taking proceedings against them for failure to comply therewith as provided in Order 16 of the Code;

- (xxx) Applications for extension of time under O. XXVII Rule 7 of the Code or by a party in default for further time to file written statement or affidavit or documents;
- (xxxi) Applications for statement of names and disclosures of partners' addresses and residence under O. XXX Rule 1 and 2 of the Code;
- (xxxii) Applications for orders requiring a party to a suit or matter to produce and leave with the Registrar any document not in the English language in his possession for the purpose of being officially transplanted;
- (xxxiii) Applications for orders for the production of records or documents, or accounts filed in such records before any other court;
- (xxxiv) Applications for the issue of a precept to another Court for the production of a record of such court or of notice of summons to a public record or register;
- (xxxv) Applications to send decree and orders passed in the court in exercise of its original ordinary jurisdiction to other Court for execution;
- (xxxvi) Applications for production, inspection of a will or a copy thereof;
- (xxxvii) Applications under order XXII of the Code for bringing on record the legal representatives of a deceased party.
Provided that no order of substitution or reviver shall be made by Registrar.—
- (i) where a question arises as to whether any person is or is not a legal representative of the deceased party; or
- (ii) whether a question of setting aside the abatement of the cause is involved in such case the Registrar shall after making an enquiry place the matter with his report and the findings before the appropriate Bench of the Court;
- (xxxviii) Applications for enlargement or abridgment of time except where time is fixed by the Court;
- (ixl) Applications for confirmation of sale and certificate of sale to purchase of immovable property;
- (xli) Other interlocutory applications directed by the Judge hearing the case to be placed for disposal before the Registrar, and such other applications as by these Rules

- directed to be so disposed of, but not included in this Rule;
- (xli) Applications for particulars;
 - (xlii) Applications for further and better statement of particulars under Rule 5 of Order VI of the Code;
 - (xliii) Applications for better statement of claim or defence;
 - (xliv) Any matter which in accordance with orders or directions issued by the Court is required to be dealt with by the Registrar.

(b) Criminal.

- (i) Power to sign complaints under the proviso to section 476(1) of the Code;
- (ii) To issue notice to parties in criminal reference.

(c) Appellate.

- (i) To issue notices on an application for probate or Letters of Administration or for revocation of the same;
- (ii) To dispose of all matters relating to the service of notices, or other processes, including substituted service, except the powers to dispense with service on proforma respondents;
- (iii) To appoint or discharge a next friend or guardian *ad litem* of a minor or person of unsound mind except in case under appeal to the Supreme Court and to amend the record accordingly;
- (iv) To receive and dispose of an application under Order XXII Rules 2, 3 and 10 of the Code of Civil Procedure, and to amend the record, if necessary, except in cases under appeal to the Supreme Court;
- (v) To receive and dispose of an application under Order XLI Rule 10 of the Code of Civil Procedure;
- (vi) To receive an application under Order XLV Rule 16 of the Code of Civil Procedure and to issue notice thereon.
- (vii) To require any person or party to file an affidavit with respect to any application or matter in respect of which he has power to exercise any discretion or to make any order;
- (viii) To call for a further deposit when the deposit already made by the appellant in an appeal to the Supreme Court is not sufficient to defray the cost of preparing the record;
- (ix) To order payment of the interest accruing on Government Promissory Notes deposited under Order XLV Rule 7 of the

- Code of Civil Procedure and to order to refund of any unexpanded balance under Order XLV Rule 13;
- (x) To grant time for making up deficiency in Court fees in cases referred to him as Taxing Officer under Section 5 of the Court Fees Act. No application for extension of the time will be refused without the orders of the Court.

Provided, that the Registrar may refer any matter under this rule to the Court for orders.

B. ADMINISTRATIVE.

1. To sign all routine letters, conveying orders passed and asking for informations required to complete cases for submission to the Chief Justice provided that matters of urgent nature shall be brought to the notice of the Chief Justice;
2. To sign all pay, travelling allowance and contingent bills of office establishment and to pass orders for contingent expenses within the limit of *Rs. 5000/-;
3. To prepare the agenda for the Meeting of the Judges as directed by the Chief Justice and record the proceedings of such meeting;
4. To scrutinize the preparation of record for the Supreme Court;
5. To prepare the budget; and
6. To sanction advances from G.P. Fund in the case of Non-Gazetted staff of the Court.

*[Rs 10,000/- vide High Court Notification No. 189 dated: 4-02-2003]

16. All applications shall be placed before Registrar.— All applications except those in which urgent ex-parte orders are sought, will be placed before the Registrar in the first instance. He will dispose of such of them as he is empowered to do and as regards the rest may call for replies and rejoinders and take such other steps as are necessary to make them ready for hearing, before listing them before the Court.

17. Appeal against the Registrar's orders.— Any person aggrieved by any order made by the Registrar under Rule 15 may within 15 days of the making of such order, appeal against it to the appropriate Bench. The appeal shall be in the form of a petition bearing court fee stamp of the value of Rs. 5/-.

18. Registrar shall be deemed to be performing Judicial or quasi-judicial functions.— The Registrar shall be deemed to be performing judicial or quasi-judicial function within the meaning of section 128

(2) (i) of the Code of Civil Procedure when exercising powers referred to in rule 15(A) above and the proceedings shall be subject to revision by a Single Judge on the motion of the party aggrieved.

19. Registrar may exercise powers of a Court u/s 151 CPC.— The Registrar may exercise all the powers of a Court under Section 151 of the Civil Procedure Code in respect of his own judicial or quasi-judicial orders.

20. Delegation of the Registrar's powers.— The Chief Justice may assign and the Registrar may, with the approval of the Chief Justice delegate to any officer of the Registry any power or function required by these rules to be exercised or performed by the Registrar.

CHAPTER-IV **CLASSIFICATION OF CASES AND LISTING**

21. Classification of proceedings in the High Court.— The classification of proceedings in the High Court shall be as follows:-

- (i) Appeals as mentioned in Rule 38;
- (ii) Civil Revisions, which refer to revisions against orders of decrees of subordinate Courts or authorities;
- (iii) Miscellaneous civil cases, which include references under section 113 and reviews under Section 114 of the Code and all such matters which are neither appeals nor revisions, nor civil original cases, nor matters that come up before the Court in the exercise of its criminal jurisdiction;
- (iv) Criminal revisions which include all petitions made under Sections 435 and 439 of the Code of Criminal Procedure, Samvat 1989 (XXII of 1989);
- (v) Criminal references including those involving confirmation of sentence of death or life imprisonment;
- (vi) Miscellaneous Criminal Cases;
- (vii) Writ petitions including Habeas Corpus petitions under section 491 of the Criminal Procedure Code, 1989 (XXIII of 1989);
- (viii) Civil Original suits including applications filed on the original side of the Court other than those expressly enumerated in this Rule;
- (ix) Criminal trials;
- (x) Applications for leave to appeal to the Supreme Court;
- (xi) Contempt Applications;

(xii) Miscellaneous judicial cases which mean cases not falling within any of the categories hereinbefore mentioned and include applications under Section 104 of the Constitution.

22. Registers of Institutions etc.- (1) Corresponding to the classification as aforesaid the registers of institutions, disposals and other connected matters, indices etc. will be maintained in forms to be prescribed by the Chief Justice from time to time.

(2) Till such time as the Chief Justice prescribes such forms, the forms already in use, in this behalf, will continue to be used with such modifications and adaptations, as may be considered necessary by the Chief Justice.

23. Constitution of Benches.- (1) Judges shall sit alone or in such Benches as may be constituted from time to time by the Chief Justice and do such work as may be allotted to them by the Chief Justice or under his directions.

(2) Whenever a Judge is shifted from one wing to another wing of the Court, the cases assigned to him including part heard matters shall stand released and may be listed before any other available Judge(s) / Bench(es).

SHORT NOTES

Power of Chief Justice to transfer case from one wing to another: The question of transfer of a case from Srinagar wing to Jammu wing came up for hearing before Hon'ble Chief Justice of J&K High Court in the instant case and the Court held as under.

"17. In consideration of the above as well as having regard to the ratio laid down in *Rajni Sehgal's* case [titled *Rajni Sehgal v. State of J&K & Anr.*, AIR 1999 SC 1591], (supra) and *H.S. Ramal's* case (Supra) [*H.S. Ramal v. Union of India*, 1994 SLJ 315], it is reiterated that the Chief Justice has the exclusive power to cause shifting of cases from one Wing to the other Wing and that too only in exceptional circumstances. It is accordingly opined, that the use of expression /word "transfer" is a misnomer, and in the fitness of things it is felt that it would be appropriate to use the expression 'shifting of case from one Wing to the other Wing' and its allotment before the appropriate Bench sitting in that Wing where to the case has been shifted. It is made clear that such shifting of case can be done only in case of exceptional circumstances. Needless, to say that in case of filing of a fresh case in either Wing of this High Court, the same principle shall be applied." In the result the application is allowed."

• ***Mohd. Hafiz v. State of J&K & Ors., 2011 (1) JKJ 249 (HC).***

In another case where respondents were facing criminal complaint under Section 500 and 506-B RPC pending before 2nd Additional Munsiff, Judicial Magistrate, first class, Srinagar for allegedly publishing a false story in the Daily Pioneer, New Delhi under the title "The tip of jihadi iceberg". After the Magistrate took cognizance of the complaint, respondent moved a transfer application no. 19 of 2005 in Jammu

wing of the High Court seeking transfer of the complaint from Judicial Magistrate Srinagar to Judicial Magistrate at Jammu. While this application was pending at Jammu, the petitioner (complainant in Criminal complaint) filed the application for the transfer of this transfer application from Jammu wing of the Court to Srinagar wing on variety of grounds / reasons.

It was contended by the other side that Chief Justice has no power to transfer a case /application from one wing to the other. The Hon'ble Judge held as under:

"9. From all this it becomes clear that any efforts to know the meaning of word squarely depend on the context, in which it is used, be that in a criminal or civil proceedings, for that matter, in any statute whatsoever. For general purposes, however, the word "case" has to be taken as a word of very comprehensive import and amplitude to mean a legal proceeding commenced by a statement of fact or facts which furnishes the exercise of a jurisdiction at the instance of a party. It includes part proceedings also. Therefore, if proceedings can be commenced by an application which invokes the legal jurisdiction by the party, it becomes a 'case' pending before the forum / authority whose jurisdiction is invoked. It need not necessarily be a suit or any type of a formal legal pleading or a criminal complaint. Even same relief in law to be granted becomes a "case" irrespective of the label under which it is filed or remains pending."

"10. In the present case, respondents have admittedly filed an application for transfer of a private complaint from Judicial Magistrate, Jammu. This application is based on a cause of action claimed to be available to the respondent on which they are seeking a consideration, adjudication and disposal by the Court. Therefore, this application partakes the character of a legal proceeding and becomes a "case" within the meaning of that word and as the Chief Justice enjoys the power to transfer a case from one wing of the Court to the other and vice versa, he is as much competent to exercise this power in respect of this transfer application also which is pending before the Court for seeking some relief under law. The second preliminary objection raised by the respondents' counsel is, therefore, also rejected and it is held that the Chief Justice possesses the power to transfer even a transfer application which is a "case" from one wing of the High Court to the other wing."

- *Ghulam Nabi Shaida v. Chandan Mitra & Ors, 2007 (1) JK 577-HC.*

24. Suits, appeals, applications required to be filed before registry.—(1) All suits, appeals, applications and other cases sought to be filed in the Court shall be presented in the Registry before the Filing Counter and shall be registered and numbered after objections if any are removed.

(2) Unless otherwise provided by these rules all cases shall ordinarily be listed before the Court on expiry of 7 days from the presentation thereof. However, in case of urgency, the petition shall be listed as per the directions of the Chief Justice or any other Court authorised in this behalf by him.

SHORT NOTES

Public Interest litigation: The petitioners before filing the writ petition as is clear from the aforesaid rules were required to send representation to concerned authorities which they have not, in absence thereof, were to project that the matter is of urgent nature so filed without sending such representation but again prior notice to filing petition to the concerned authorities or their counsel was imperative. In the petition neither petitioners have projected any urgency so as to file petition without sending representation to the concerned authorities nor have they given any prior notice as was required.

Petition WPPIL No: 03/2012 was also required to be settled in terms of sub-rule 4 (viii) of Rule 34 to make a statement that to the best of their knowledge, whether any other PIL petition was filed. Admitted WPPIL No. 02/2012 was pending, they have opted to remain silent, that have not made requisite statement so have not observed the Rules. Non-observance of Rule 24 of J&K High Court Rules, 1999 also renders both petitions as pre-mature.

- *Rinkoo Sharma v. Union of India & Ors., 2012 (3) JKJ 285-HC (DB).*

25. Cases shall be set down for hearing before Benches with the approval of Chief Justice.— (1) Cases shall be set down for hearing before the various Benches of the Court by the Registrar with the approval of the Chief Justice.

Provided that the Chief Justice may, from time to time direct the preparation of monthly, weekly or daily lists of cases set down for hearing.

(2) Cases shall ordinarily be set down for hearing in orders of their date of admission unless otherwise directed by the Chief Justice.

(3) Cases involving similar or identical points shall, as far as may be classified and grouped together and set down for simultaneous hearing unless otherwise directed by the Chief Justice.

~~(4) The Court may weed out dead cases.~~

SHORT NOTES

Cause List—Listing of case in regular cause list—sufficient notice to parties of date of hearing: Here arises a question as to whether listing of a case can be presumed to be sufficient notice. To answer this question it is relevant to notice that it is an age old practice in this Court that the necessary particulars of a case, which include number, title and names of Counsel, are reflected in the regular cause list and cases are listed for admission, orders, preliminary and final; hearing according to the said procedure and the learned counsel for the appellant is fully aware of this practice which is not rule of law but rule of practice, whereas procedure and excuse offered by the learned counsel for the appellant, if held tenable, in such eventuality, notice is to be issued for every date when the case is listed before the Court and this proposed practice evolved is bound to protract the litigation unnecessarily and with a view to rule out possibility of any confusion, we make it clear that listing of matter in the regular cause list, giving necessary particulars of the case, is sufficient notice to the parties, question answered accordingly.

- *Mst. Saja v. Gulam-ud-Din Teli, 1998 SLJ 310 (LPA No. 43 of 1993) decided on 21-07-1998.*

CAVEATS

26. Lodging of Caveats.— (1) Where an application is expected to be made or has been made, in petition or proceedings instituted, or about to be instituted in the Court, any person claiming a right to appear before the Court on the hearing of such petition/application may lodge a caveat.

All such Caveats lodged shall be entered in the Register maintained for the purpose.

(2) Where a Caveat has been lodged under sub-rule 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 petition has been or is expected to be made under sub-rule 1. Receipt of the registered post shall be filed along with such caveat.

(3) Where, after a caveat has been lodged under sub-rule 1, any petition or application is filed the Registry shall serve a notice of the petition or application on the Caveator.

(4) Where a notice of any Caveat has been served on the petitioner, he shall forthwith furnish the Caveator, at the Caveator's expense, with copy of the petition/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 petition/application.

(5) When the petition/application is fixed in the Court, the cause list for the same shall show the name of the parties/Advocate filing the caveat. The caveat shall also be listed along with the petition/application.

(6) Where a caveat has been lodged under sub-rule 1, such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the petition/application referred to in sub-section has been made before the expiry of the said period.

Explanation: For the purpose of this rule 'Petition' shall mean any writ petition, appeal, revision, reference or petition for review.

CHAPTER-V SEAL OF THE COURT

27. Seal of the Court shall bear device and impression of State emblem.— (1) The official seal used in the Court shall bear a device and impression of the State emblem with an exergue or label surrounding the same with the inscriptions.

"The Seal of the High Court of Jammu and Kashmir"

(2) The seal shall be kept in the custody of the Registrar or such other Officer of the Court as the Chief Justice may designate in this behalf.

28. Seal shall not be affixed without the authority of Registrar.—The seal of the Court shall not be affixed to any Writ, Rule, Order, Summons or other process or any other document save under the authority in writing of the Registrar.

CHAPTER-V!
JURISDICTION OF A SINGLE JUDGE
AND OF BENCHES OF THE COURT

29. Jurisdiction of a Single Judge.— Except as otherwise provided by these rules or by any other law for the time being in force the following cases shall ordinarily be heard and disposed of by a Judge sitting alone, namely.—

(1) A motion for the admission of a memorandum of appeal or cross-objection or an application;

(2) (a) A civil first appeal from a decree or an order of a District Judge.

(b) A second appeal under section 100 of the Code;

(c) A revenue appeal and appeals against the awards of Motor Accident Claims Tribunal or any Labour Court, Board or Tribunal;

(d) Any other civil appeal under any law for the time being in force including appeals under the Jammu and Kashmir Hindu Marriage Act, 1990;

(e) Acquittal appeals in cases where the accused was charged of offences not punishable with death, imprisonment for life or sentence exceeding ten year;

(3) A civil revision under the Code or any other law for the time being in force;

(4) A suit coming before the Court in the exercise of its ordinary or extraordinary civil jurisdiction including a proceeding on the original side of the Court under any law for the time being in force;

(5) An application under section 22, 23 or 24 of the Code or under section 104 and 105 of the Constitution;

(6) An application for leave to appeal to the Supreme Court when the case has been heard and decided by a Single Judge;

(7) Writ Petitions and applications under section 491 of the Code of Criminal Procedure;

(8) An application under clause 12 of the Letters Patent for grant of a declaration that the case is a fit one for appeal;

- (9) A criminal appeal, application or reference except.—
- (a) An appeal or reference in a case in which a sentence of death or imprisonment for life has been passed;
 - (b) An appeal in a case in which a sentence of imprisonment for a term exceeding ten years has been passed;
 - (c) An appeal under section 417(2) of the Code of Criminal Procedure, 1989 (1933 A.D.) from an order of acquittal,
 - (d) A case submitted under section 307 or Section 432 of the Code of Criminal Procedure, 1989 (1933 A.D.);
 - (e) A case in which notice has already been issued under section 439 of the Code of Criminal Procedure, 1989 (1933 A.D.) to a person accused of an offence punishable with death, life imprisonment or imprisonment not less than 10 years to appear and show cause why his sentence should not be enhanced;
- (10) A dead case.

SHORT NOTES

It has been held by Division Bench of Hon'ble High Court of J&K that Single Judge has no jurisdiction to condone delay under Section 5 of Limitation Act after allowing the revision petition to be converted in appeal when appeal itself was maintainable by Division Bench under High Court Rules. The Division Bench held as under:

"Once it has been found that the appeal is entertainable by Division Bench, the learned single Judge loses its jurisdiction to condone the delay on the application under Section 5 of Limitation Act, thus even if the order is passed condoning the delay in favour of the appellant, the said order ipso facto becomes without jurisdiction and cannot be treated as an order in the eyes of law as is rightly ordered by the learned Single Judge that question of limitation will remain open to the respondent."

Condonation of delay—sufficient cause: Delay of each day has to be explained. No exception is made for the Government in the matter of Condonation of delay. In the instant case specific dates, reasons for delay explaining each day's delay and sufficient cause was not in the case, the Court disallowed the application as hopelessly time barred.

- *State of J&K v. Ram Kali, 1987 KLR 717.*

30. Cases to be heard by Division Bench.— Save as otherwise provided by these rules or other laws or by any general or special order of the Chief Justice, every other case shall be heard and disposed of by a Division Bench.

Provided that –

- (a) the Chief Justice may direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more judges; and

- (b) a judge sitting alone may, if he thinks fit, refer a case of any question of law arising therein for decision to a larger Bench to be constituted by the Chief Justice.

31. LPA to be heard by a Bench comprising of at least two judges.— Appeals preferred under Clause 12 of the Letter Patent from the judgment of one Judge shall be heard by a Bench consisting of at least two judges other than the Judge from whose judgment the appeal is preferred.

32. Cases withdrawn under Section 105 of the Constitution.— A case withdrawn from a Court subordinate to the court under Section 105 of the Constitution shall be heard by a Bench of two or more Judges constituted by the Chief Justice.

33. Reference to a large Bench.— The Chief Justice may constitute a bench of two or more judges to decide a case or any question of law formulated by a bench hearing the case. In the later event the decision of the such bench on the question so formulated shall be returned to the bench hearing the case and that bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.

Provided that whenever in any case a Division Bench differs from any other Division Bench of the Court on a point of law or usage having the force of law such case or point shall be referred for decision by a larger bench to be constituted by the Chief Justice.

SHORT NOTES

A full Bench of J&K High Court comprising of Justice Syed Bashir-ud-Din, Justice Permod Kohli and headed by Hon'ble Acting Chief Justice V.K.Jhanji, in the instant case has held as under.

"18. A bare perusal of the aforesaid provisions of the High Court Rules makes it unambiguously clear that if a Division Bench differs from any other Division Bench of the Court on a point of law, or usage having the force of law, or even arrives at a different view then that taken by earlier Division Bench, such case shall be referred for decision by a larger Bench. Though in the instant case, no specific point of law has been formulated by the Division Bench yet, the areas of difference with the decision rendered by the earlier Bench have been indicated in the order quoted above. Once the Division Bench after hearing learned Counsel for the parties, was of a different view that the earlier Division bench, being a co-ordinate Bench, the only course left was to refer the case for decision by a larger Bench. Specifying the areas of difference, or difference in views, cannot be said to be pre-conditioned Reference or deficient in any manner."

- *State of J&K v. Mohammad Shafi Bhat & Ors., 2004 (1) JKJ'48-HC (FB).*

Doctrine of binding precedent-exception: In the instant case, it was argued that in view of the judgment reported as "*Darbari Lal & Ors v. Madan Lal & Ors*, 2011 (1) JKJ HC-649" decided on 15-03-2011, where by a civil appeal against order of the Appellate Court, rejecting appeal against the trial Court order dismissing application under Section 39 CPC is held maintainable, this Court, even if, it is inclined to hold otherwise, is left with no option but to submit the matter to Chief Justice for its, reference to a larger Bench in terms of Rule 33 J&K High Court Rules, 1999. The argument is bereft of any merit for the simple reason that the judgment rendered by learned Single judge in *Darbari Lal's* case (*supra*) is per *in curium* in as much as the law laid down in "*Prem Bakshi & Ors. v. Dharam Dev & Ors.*, AIR 2002 SC 599; *Shiv Shakti Co-op. Housing Society v. Swaraj Developer & Ors.*, AIR 2003 SC 2434; *Surya Dev Rai v. Ram Chander Rai*, AIR 2003 SC 3044; and *Gayatri Devi v. Shashi Paul Singh*, AIR 2005 SC 2342" has not been brought to the notice of the Learned Single Judge.

This apart, Court earlier in *Om Prakash v. Mohan Lal Sharma*, 2010 (3) JKJ HC-36 (decided on 18-09-2010), held that in view of amendment to Section 115 CPC the revisional jurisdiction of High Court was restricted to a great extent and an order was not revisable, unless if passed in favour of the party filing the revision petition petition, it would have clinched the suit or other proceedings. This Court in aforementioned case held that a civil revision against an order disallowing amendment in the pleadings was not maintainable, in as much as the order if passed in favour of the petitioner would have finally disposed of the suit. The judgment appears not to have brought to the notice of the learned Single Judge. The doctrine of binding precedents of co-ordinate Court though not absolute in its applicability is to be followed, so as to achieve uniformity of Court decisions and certainty about the law. However, one of the exceptions to the rule that a decision of the Court of co-ordinate jurisdiction is to be followed by another Court of same strength, is that a judgment delivered, per *in curium* is not binding on account of co-ordinate jurisdiction. So, viewed, the judgment reported in *Darbari Lal's* case does not stand in the way of the Court to decide the matter. Resultantly, Rule 33 J&K High Court Rules, 1999 is not attracted at all.

- *Manohar Lal v. Romesh Chander*, 2012 (1) JKJ 411-HC.

34. Judgment of Full Bench shall be binding on all D.B's.-

(1) Every decision of the Full Bench shall be binding on all Division and Single Benches upon the point of law or usage having the force of law determined by the Full Bench unless it is subsequently reversed by another Full Bench of equal or larger strength.

(2) A decision of a Division Bench on a point of law or usage having the force of law shall be binding on a Single Bench.

SHORT NOTES

Judgment of Full Bench is binding on Division Bench/Single Bench: Rule 34 of High Court Rules 1999 provides that every decision of Full Bench shall be binding on all Division Bench/Single Bench upon point of law or usage having force of law determined by Full Bench and a decision of Division Bench upon point of law or usage having force of law shall be binding on Single Bench. The declaration made

under Rule 34 of 1999 refers to point of law, and it does not talk of merger of the judgment of Single Judge in the Judgment of the Division Bench.

In this scenario what would be the effect of the Judgment handed down by Single Bench when the said Judgment is challenged in appeal. Under clause-12 of the Letters Patent, a party which is not satisfied with the Judgment of the Single Judge can file an LPA against the same before the L.P. Bench which comprises of two or more judges. The intention of aggrieved person is to get the judgment of Single Bench modified or set-aside on the basis of facts and law available in the case. Aggrieved person who throws challenge to the judgment before appellate forum thus of his own volition gives up its claim over the judgment of Single Judge and invites upon itself a judgment from the L.P. Bench. The consequence of such action of aggrieved person would be that the judgment passed by the L.P. Bench will be binding on him as he invokes the said jurisdiction and invites a judgment out of his own violation. Since two judgments one from Single judge and the other from Division Bench cannot operate at one point of time, on the doctrine of election by aggrieved person, the judgment of the L.P. Bench will prevail and the judgment of Learned Single Judge will cease to be in existence. It is the Judgment of the Division Bench which will hold the field and govern the subject matter of the dispute between the parties and will bind them. (Para 24 & 25)

- *Mehraj-ud-Din Mir v. State of J&K & Ors., 2010 (2) JKJ 343 (HC)*

35. Opinion of Full Bench if divided.— When the Full Bench consisting of an even number of Judges is equally divided, the case shall be decided in accordance with the opinion of the Judges who agree with the view of the senior-most Judge of the Bench.

36. In the event of difference of opinion, majority view will prevail.— (1) In the event of a difference of opinion among the Judges composing any bench of the Court, the decision shall be in accordance with the opinion of the majority of the Judges.

(2) If the Judges composing the bench are equally divided on any point, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges designated for the purpose by the Chief Justice and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the case including those who first heard it.

(3) If there is no such majority then the decision shall be in accordance with the decision of the senior Judge except in the case of an appeal from a decree where such decree shall be confirmed.

37. Part heard case will ordinarily be heard by the same Bench.— Except as otherwise directed by the Bench concerned or by the Chief Justice and subject to Rule 23(2), a case partly heard by a bench shall ordinarily be laid before the same bench for disposal.

A case in which a bench has merely directed notice to be issued to the opposite party or passed an *ex parte* order shall not be deemed to be a case partly heard by such bench.

SHORT NOTES

It is not open to the other Judge of the High Court to sit in appeal against the order passed by co-ordinate Bench of the same Court. If the accused had obtained bail order by mis-representation or by suppression of facts, it was for the State Government or the aggrieved party to approach the appropriate high forum. In any case, for cancellation of bail on the ground of mis-representation or mis-statement, the matter ought to have been placed before the same Judge.

The law on this aspect is well settled. In *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, 1987 (2) SCC 684, while dealing with the subsequent bail application, this Court observed: "normally this Court does not interfere with bail matters and the orders of High Courts are generally accepted to be final relating to grant or rejection of bail." Thereafter the Court stated that long standing convention and judicial discipline requires that subsequent bail application ought to have been placed before the same judge who had passed earlier orders. Placing of such matter before the same judge has its roots in principle as it prevents abuse of process of Court in as much as an impression is not created that litigant is shunning or selecting a Court depending on whether the Court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up; if successive applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders. The Court finally observed that judicial discipline requires that such matters should be placed before the same judge, if he is available for orders. Same principle is required to be followed even for setting aside the orders passed by the Court granting the bail on the ground of mis-representation or mis-statement of suppression of same facts.

Further in *Vikramjit Singh v. State of Madhya Pradesh*, 1992 Supp (3) SCC 62, dealing with similar situation, this Court observed as under.

".....No bench can comment on the functioning of a co-ordinate bench of the same Court, much less sit in the judgment as an appellate Court over its decision. That which could not be done directly could also not be done indirectly. Otherwise a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter reopened before another Bench, and there would not be any end to such attempts. Besides it was not consistent with the judicial discipline which must be maintained by the Court both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in judiciary."

- *Harjeet Singh alias Seeta v. State of Punjab & Anr.*, 2002 CriLJ (SC) 571.

CHAPTER-VII

APPEALS, REVISIONS, REFERENCES AND REVIEW

38. Classification of Appeals filed in the High Court.— Appeals presented to the High Court shall be classified as follows:—

(1)(a) Regular First Appeal, that is, First Appeals against decrees in original suits;

(b) Execution First Appeals, that is, First Appeal against original orders determining question under section 47 of the Code of Civil Procedure deemed to be decrees;

(c) Miscellaneous First Appeals i.e. First Appeal against any other judgment or order including any order as to cost only, made by a subordinate civil court in the exercise of the original civil jurisdiction or any other court or tribunal against which appeal is provided for under any enactment.

(2) (a) Regular Second Appeals, that is, Second Appeals arising out of original suits;

(b) Execution second Appeals, that is, Appeals against appellate orders determining questions under section 47 of the Code of Civil Procedure deemed to be decrees;

(c) Miscellaneous Second Appeals, that is Second Appeals from any judgment decree or order other than those falling under sub-clause (a) or (b).

(3) Criminal Appeals, that is, appeals to the High Court from an order or sentence passed by a subordinate criminal court in the exercise of its original criminal jurisdiction including acquittal appeals.

(4) Any other appeal which does not fall in any of the aforesaid clauses.

39. Every appeal shall be filed in the form of Memorandum duly signed by the party/Advocate.— Every appeal shall be preferred in the form of a memorandum signed by the appellant or his Advocate and shall contain the following particulars:—

- (1) The name and description of each of the subordinate courts out of the proceedings before which the appeals arised;
- (2) Denoting numbers of the file numbers of the proceedings before each of the subordinate courts;
- (3) The date of the decree, order or sentence appealed from;
- (4) The name and full addresses for services of all the parties to the appeal with their respective rank in each of the subordinate Courts;
- (5) The provisions of law under which the appeal is preferred;
- (6) Grounds of appeal in consecutively numbered paragraphs; and
- (7) In civil Appeals a statement of the amount of value of the subject matter of the dispute in the Court of the first instance in the appeal and a statement of the amount of

Court fee payable and paid on the appeal together with the provisions of law under which it is calculated.

40. If appellant is represented by Advocate, full address for service shall be mentioned.— When the appellant is represented by an Advocate, the memorandum of appeal shall give an address for service at which service of any notice, order or process that may be made on the party filing such memorandum.

41. Documents required to be attached with the memorandum of appeal.— Every memorandum of appeal shall be accompanied by the enclosures required by Orders XLI, XLII or XLIII of the Code of Civil Procedure or section 419 of the Code of Criminal Procedure or the provisions in this behalf of law applicable to the appeal, as the case may be, and by additional plain paper copies of the memorandum of appeal typed on thick paper. Where the appeal is one which can be admitted only by a Bench, the appellant shall also file with the memorandum one additional typed paper copy of the judgments and decrees of the subordinate courts and such additional copy of the document required by Order XLII Rule 3 of the Code.

42. Regular first appeal shall be accompanied by memo/registered envelope etc.— In case of Regular First Appeals and Appeals against appealable order, the memorandum of appeal shall also be accompanied by a memo in prescribed form for issue of processes or notices to respondents with the appropriate amount of process fee affixed thereto in the shape of stamp together with as many plain paper copies of the memorandum of appeal as there are respondents to be served. When service is to be effected by registered post, there shall also be produced as many envelopes and post acknowledgments forms as there are respondents to be served and the name and the address of the respondent to be served shall be written on the relative envelope and the acknowledgment form.

SHORT NOTES

Rule 39 to 42: The ratio of the judgment is that all the parties to /is should be present before the Court when it is decided with the consent of the parties. The procedure to be adopted for writ petition is slightly different because the parties are required to file pleading before the High Court. Even after admission the respondents have right to file counter affidavit or better pleadings a writ petitioner has a further right to file rejoinder. Perhaps it was in this context that the Apex Court observed that the writ petition is required to be admitted and then disposed of. As far as civil appeal is concerned, after the service of the respondents no pleadings are required to be filed. It is only the memorandum of appeal and record of trial Court which is relevant. All these requirements were duly observed by the

appellate Court. The parties having appeared through learned counsel there was no necessity of issuing notices/summons to them. The record of trial Court was summoned and after examining of the record the appeal was decided. Beside this appeal was preferred under O. 43 (1) and in terms of Order 43 Rule 2 procedure laid down under Order 41 in respect of appeals arising out of appealable decrees is appealable. There is no provision under Order 41 CPC which requires the formal admission of the appeal. It is only Rule 9 Order 41 that requires the registration of appeal on the admission of memorandum of appeal with appellate Court or its officer. In the present case the memorandum of appeal having been presented to proper officer of the Court, entered in the concerned register and numbered as CIMA No. 151 of 2002, satisfied the requirements of Order 41 Rule 9 CPC. Therefore, the contention of petitioner fails.

- *Chamber of Commerce and Ors. v. Ashok Kumar Gupta & Ors., 2004 (1) JKJ HC 81.*

43. In case of Second appeal enclosures need not be furnished along with but shall be furnished within 7 days of the order.— In case of Second Appeals and of Appeals against appealable orders, the enclosures mentioned in Rule 42 need not be furnished along with the memorandum of appeal but shall be furnished within seven days from the date of which the admission of the appeal is ordered. This rule shall also apply to appeals presented after the expiry of the period prescribed therefore by law and also to appeals presented in the *forma pauperis*.

44. Appeals presented after expiry of limitation period.— Appeals presented after the expiry of limitation prescribed for the presentation thereof shall be accompanied by an application supported by an affidavit explaining the delay and setting forth the grounds on which the appellant seeks the condonation of delay.

The appeal shall be registered and listed for preliminary hearing only in the event of delay being condoned by the court.

45. Cross objections filed shall be in the form of a memorandum.— The cross objections filed under the provisions of Order XLI, Rule 22 of the Code of Civil Procedure shall be in the form of a memorandum entitled in the main appeal and shall contain the name and address of the cross objector and the parties against whom the memorandum is directed with their respective ranks in the main appeal, the date on which the cross objector was served with notice of appeal the objections to the decree appealed against in consecutively numbered paragraphs and a statement of the valuation for purposes of court fee and the amount of Court fee payable or paid thereon together with the provisions of law under which it is calculated.

46. Memorandum of cross-objections shall be accompanied by memo in prescribed form for service.— The memorandum of cross-objections shall be accompanied by a memo in prescribed form for service through Court with the appropriate amount of process fee affixed thereto in Court fee stamps together with as many plain paper copies of the memorandum as there are parties to be served excluding the parties represented by Advocates in the main appeal in respect of whom an acknowledgment required by sub-rule (3) of Rule 22 of Order XLI of the Code of Civil Procedure has been filed with the memorandum.

47. Provisions of Rule 44 & 45 shall apply to memorandum of cross-questions.— The provision of Rules 44 and 45 of this Chapter shall apply to a memorandum of cross objections presented after the expiry of the period prescribed therefor under Order XLI Rule 22 of the Code of Civil Procedure.

48. Suits or proceedings when hear together and disposed of by common judgment by subordinate Court, one certified copy shall be filed with all appeals unless directed otherwise.— Where several suits or proceedings are heard together and disposed of by a common judgment by a subordinate Court, any party filing appeals against the decree or order made therein may file only one certified copy of the common judgment in respect of all such appeals. Unless the Court otherwise directs, all such appeals shall be posted together for disposal.

This rule shall apply *mutatis mutandis* petitions also.

ORIGINAL SIDE APPEALS

49. Appeals filed under clause 12 of Letters Patent shall be designated as 'ORIGINAL SIDE APPEALS'.— Appeals under clause 12 of the Letters Patent shall be designated 'Original Side Appeals'.

SHORT NOTES

The dispute in this case was that when suits are disposed of by common judgment, whether separate appeals are to be filed? The Court has observed as under.

"In terms of Rule 49 & 50 of High Court Rules 1999, for short as Rules, appeals are to be preferred in the form of Memorandum in accordance with the provisions of Order XLI Rule-1 of the Code of Civil Procedure, for short Code, and in terms of Rule 54 of the Rules, the provisions of the Code are applicable. It is apt to reproduce the proviso to Rule-1 Order XLI of the Code as under.

"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 by the same appellant or by different appellants, the appellate

Court shall dispense with the filing of more than one copy of the judgment."

Proviso (supra) specifically provides that if two or more suits are being tried together and a common judgment has been delivered and two or more appeals filed by the same appellant or by different appellants, the appellate Court may dispense with the filing of more than one copy of the judgment. Thus it is crystal clear that if a party is aggrieved of the common judgment wherein two or more suits have been tried together it has to file two or more appeals against the common judgment and cannot question the common judgment by the medium of one appeal.

This question also came up for consideration before division Bench of this Court in CMP No. 200 of 2004 was decided on 9-12-2004. It is apt to quote the relevant para.

"The correct statement of law would be to file as many appeals as the writ petitions were before the Court. The fact and the law applicable to the dispute involved in two writ petitions being similar can be decided by a common judgment but the law does not permit to file only one appeal against the said judgment."

- *Nazir Ahmad Wani v. State & Ors., 2011 (1) JKJ 584-HC (DB).*

50. Every original side appeal shall be preferred in the prescribed form.- (i) Every original side Appeals shall be preferred in the form of a memorandum in accordance with the provisions of Order XLI Rule-1 of the Code and shall be subscribed by an Advocate.

(ii) Such an appeal shall be preferred within sixty days from the date of the judgment appealed from, provided that the Court may in its discretion, on good cause, shown, extend such period on an application of the interested party supported with an affidavit.

(iii) It shall be the duty of the officer to whom the memorandum is presented under these rules to endorse thereon the date of presentation, to satisfy himself that it is properly stamped and is within time and, where the appeal is from the judgment or order passed by a Judge sitting alone in an appeal from an appellate decree or order, that there is a declaration by the Judge who passed the judgment or the order that the case is a fit one for appeal. If the appeal is in order and is within time, the office to which the memorandum of appeal was presented shall cause it to be registered. If the appeal is not in the proper form the Registrar may allow time within which the defects therein may be removed and may lay the same before the Bench for orders in case his order is not complied with.

(iv) For original side appeal, the Court fee shall be levied at the same rates and in the same manner as in appeals falling under section 4 of the Court Fees Act, 1977 (VII of 1977), provided that the fee shall not in any case be less than ten rupees.

(v) An original side appeal shall be posted before a Bench of two judges for preliminary hearing/final hearing.

SHORT NOTES

A conjoint reading of clause 26 of the Letters Patent and Section 67 (a) of J&K Constitution Act shows that High Court has the power to regulate the practice of the High Court which power must include the powers to make Rules providing period of limitation for appeals to be filed under clause 12 of the Letters Patent . The limitation provided for any *lis* in the first schedule of the Limitation Act has on the terms of Section 29 of the Act itself, to give way to different period of limitation provided for the same *lis* in any other special law within the meaning of the Section. Thus, there is no inconsistency between this Rule and Article 156-A of the Limitation Act.

In an appeal preferred beyond the prescribed period of limitation, delay can be condoned if good cause for extending period of limitation is shown and proved.

- *State of J&K v. G.S. Baroka, AIR 1978 J&K 64 : Parvez Qadri v. Union of India, 1989 K LJ 402.*

51. Memorandum of appeal must accompany certified copy of judgment-appealed.— It shall be compulsory for the memorandum of appeal to be accompanied by a certified copy of the judgment or order appealed from as also four spare copies of the memo of appeal and of the judgment.

52. Appellant to serve the notice on the party or Advocate.— The appellant may serve the notice of appeal either on the party or on the Advocate who appeared for the said party in the original proceedings in the High Court of which the appeals arises. If such Advocate accepts the notice, the party represented by him shall be deemed to have been duly served with the notice of the appeal on the date on which the notice is accepted. If however, the said Advocate declines to accept the notice the appellant shall take step to serve the notice on the party.

53. Paper Book shall be type written.— The paper book in such appeals shall be type written and shall be prepared in the matter as prescribed under these Rules.

54. Rules applicable to first appeal may apply to original side Appeal.— Subject to the provisions of this Chapter, the Rules applicable to Regular First Appeal and the provisions of Order XLI of the Code of Civil Procedure shall as far as may be, apply to Original Side Appeal.

REVISION PETITIONS

55. Classifications of petitions not covered here to before.— All petitions not specifically covered heretobefore or by any other Rule shall be designated as petition which will be classified as follows:—

Civil petitions in civil matters; and criminal petitions in criminal matters; petitions invoking the Courts revisional jurisdiction or powers being called Civil Revision Petitions or Criminal Revision Petitions, as the case may be, and miscellaneous petitions in case not falling within any of these descriptions.

56. Every petition shall be in the form of a memorandum except in case otherwise provided.— (1) Except in cases where it is otherwise provided by these Rules, every petition shall be in the form of a memorandum; the provisions of Rule 39 and 40 shall apply *mutatis mutandis* to the form and particulars of the memorandum.

(2) Where, however, the petition is of an original nature or is not directed against any order of any subordinate court, or the circumstances of the case so require, in the place of concise ground the petition may set out the petitioner's case and grounds for relief in a narrative form in which case the petition shall be verified in the manner prescribed for verification of plaints in the Code of Civil Procedure.

(3) The Court may in any petition at any time require the petitioner to file an affidavit in verification or support of the petition or by way of evidence.

(4) Wherever the respondent to a petition has or desire to file reply to the petition such objections shall be set forth in an affidavit by or on behalf of the respondent and a copy of such affidavit shall be served on the petitioner at least two days before the date of hearing mentioned in the notice.

(5) Every memorandum of petition shall be accompanied by two plain paper copies of the memorandum and affidavit if any, one additional plain paper copy for each one of the respondent other than Vakalatnama or memorandum of appearance. If there are documents of annexures produced with, the affidavit Copies required to be filed by this Rule should include copies of such documents or annexures.

57. Every memorandum of petition shall be accompanied by certified copy etc.— (1) Every memorandum of petition to revise any order proceeding of a subordinate court shall be accompanied by :—

- (a) One certified copy of the order complained of and one such copy of the judgment, if any, on which it is based;
- (b) Where the order complained of is an appellate order, in addition to the copies mentioned in clause (a) one certified copy of the original order and one such copy of the judgment, if any, on which it is based ; and

(c) Where the proceedings out of which the revision arises, has gone through more than two subordinate courts, provisions of clause (b) shall apply to the order and judgment of each such court.

(2) The Court may on sufficient cause being shown or in its discretion upon an application made for the purpose dispense with the production of any of the enclosures mentioned in sub-clause (1) on such terms and conditions as it may deem fit.

58. All other petitions shall be accompanied by papers as may be required under law.— All other petitions shall be accompanied by such papers and documents as may be required by the law and provided by these rules. The provisions of Rule 42 shall apply *mutatis mutandis* subject to Rule 43 of that chapter to all petitions.

59. Rule 44 shall apply *mutatis mutandis* to petitions filed after expiry of limitation.— (i) Where any petition for which the law applicable to it prescribes a period within which it shall be presented or made, is presented after the expiry of the said period, the provisions of these Rules 44 shall apply *mutatis mutandis*;

(ii) No civil revision petition shall be presented after ninety days from the date of the impugned order.

Provided that the court may, on sufficient cause shown, condone the delay in presentation.

SHORT NOTES

Section 3 of the Limitation Act provides that every suit instituted, appeal preferred, and application made, after the period of limitation prescribed thereof by the first schedule shall, be dismissed. In schedule-I, no period of limitation has been prescribed for filing of a civil revision petition. However under Section 29 (2) of the Limitation Act, it is provided that limitation may also be prescribed by "special" or "local law" and in case limitation prescribed by local or special law is different from the period prescribed therefor in schedule-I of the Limitation Act, the limitation prescribed under the special or local law shall, prevail and the provisions of Section 3 shall apply as if the period prescribed under the special or local law, was the one prescribed under the schedule.

- *Pt. Badri Nath v. Pt. Dhani Ram, 1978 JKLR 644.*

REFERENCES

60. Reference made by Governor be placed before Full Bench.— Where a reference to the High Court is from a subordinate court seeking the opinion or directions of the High Court on any point or question, the reference shall be in the form of a statement of the case containing the number and particulars of the suit, appeal or other proceeding out of which the reference arises, the names and addresses of all the parties interested in or likely to be affected by

the reference setting out the facts of the case and the points or questions on which the opinion, order or direction of the High Court is sought together with the opinion of the referring officer, Court or authority thereon and shall be accompanied by such records and papers as are, in the opinion of the referring officer, Court or authority relevant for a full consideration of the reference, with two copies of such statement.

61. Reference to the High Court of confirmation of decree/sentence shall be submitted to High Court along with record of the matter.— (i) Where a reference to the High Court is for confirmation of any decree or sentence or other decision or determination sought to be confirmed, together with the entire record of the matter or proceeding in which the name has been made or passed shall be submitted to the High Court, together with a memorandum citing the provision of law under or pursuant to which the reference has been made and confirmation of the High Court sought.

(ii) The High Court may if it deems necessary to do so, call for further papers or for further information from the referring Court or authority.

62. High Court may call for another record from the referring Court.— Unless the law under or pursuant to which the reference is made prescribes a different procedure, the provisions of Rules 3, 4 and 5 of order XLVI of the Code of Civil Procedure shall apply to all references made to the High Court.

63. Designation of References to the High Court.— Reference to the High Court shall be designated as follows:—

- (1) Reference under the Income Tax Act shall be designated Income Tax Reference.
- (2) Reference under any Act levying taxes on agricultural income shall be designated as Agricultural Income Tax Reference.
- (3) Reference in all other tax matters shall be designated as Tax Reference.
- (4) All other references in civil matters shall be designated as Civil Reference.
- (5) Reference in criminal cases shall be designated as Criminal Reference.

64. Reference made by Governor shall be placed before Full Bench of at least three judges.— (1) A reference addressed to the Court by the Governor under section 130 (1) of the Constitution shall be placed before a Full Bench consisting of at least three Judges

to be constituted by the Chief Justice, which may after perusing the reference issue notice to the Chairman or the member of the Public Service Commission as the case may be, as also to the Advocate General, to appear before the Court on a date specified in the notice to take the directions of the Court in the matter of the inquiry. A copy of the charges preferred against him shall be furnished to the respondent along with the notice.

(2) The Court may summon such witnesses as it considers necessary in such inquiry and after the conclusion of the inquiry record its findings; and the Registrar shall then transmit to the Governor the report of the Court along with its findings!

(3) No Court fee or process fee shall be payable in connection with any such reference.

65. Application for review of Judgment.— The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XLVII Rule 1 of the Code.

SHORT NOTES

It was contended in the instant case that 'when the learned Court is satisfied that the petition deserves to be admitted, petition should have been allowed. Legal language for the petitioner is something new as he could not carry that it is only for the purpose of admission of the petition, satisfaction has been derived which for admitting a petition is the requirement and then post admission notice followed by the completion of pleadings is essential for absolute adjudication of the matter. While viewing the submissions on the ground enumerated in the Order XLVII Rule (1) CPC as quoted above, no case for review is made out.

From the further submission of petitioner, it appears that his grievance is that after admission it may take long time for final disposal of the petition but learned Court has taken care of the same by recording .counter affidavit within four weeks, rejoinder within one week thereafter" and has also recorded " list after ensuing summer vacation. The respondent no. 2 has filed the counter affidavits on 16-6-2010, rest of the respondents have not filed but before the expiry of four weeks, petitioner has filed the instant review petition so has protracted the disposal of the main petition. Perhaps petitioner would be satisfied if the main petition is disposed of at an earliest.

• *Mohammad Himayun Gani v. State & Ors., 2011 (2) JKJ-HC 556.*

66. Application for review shall set forth the grounds, plainly/concisely.— (1) An application for review shall set forth the grounds, on which a review is sought, plainly and concisely. It shall be signed by a counsel and shall contain a certificate by an Advocate of the Court that it is supported by proper grounds in the following form, namely.—

*"I Advocate for the above named,,petitioner
do hereby certify that I have perused the judgment and the*

relevant record of the case and in my opinion the grounds contained in the petition are good and sufficient for the review sought."

No such application shall be entertained by the Court without the aforesaid certificate.

(2) An application for review shall be accompanied by a certified copy of the impugned judgment or order and of the decree, if necessary with two spare copies thereof and where the application proceeds on ground of the discovery of fresh evidence certified copies of the documents, if any, relied upon with two spare copies thereof shall be annexed with the application together with an affidavit setting forth the circumstances under which, discovery has been made.

(3) An application for review shall be filed before the Registrar within thirty days after the judgment is delivered in the appeal, cause or matter unless the court for sufficient cause condones the delay beyond 30 days.

(4) The application for review shall be disposed of by the Court in accordance with the provisions of Order XLVII of the Code.

SHORT NOTES

The maintainability of review petition is challenged on the ground of contravention of Rule 66 of J&K High Court Rules, where under review petition is required to contain a certificate in the prescribed form. This mandatory requirement of the Rule has not been complied with in as much as the review petition does not contain certificate as envisaged by the Rule. The certificate on the letter head of the learned Advocate of the petitioner is only accompanying the review petition and that certificate is also not in the language prescribed under the Rule. The distinction is sought to be made between Rules 66(1) and 66 (2). In the former the word used is the review petition shall "contain" a certificate, whereas in the latter Rule the language used is the review petition shall be "accompanied". According to Mr. Parihar the Rule is mandatory in nature and the certificate is necessarily to be the part of review petition and not to accompany the same. Since the review petition itself does not contain a certificate and it is only accompanying the same this does not satisfy the mandatory requirements of the Rule. His further contention was that the language of the certificate annexed with the review petition is not the same as is provided under the Rule. He relied upon the judgment reported in *Bashir Ahmad Dar v. State & Ors*, 1985 SLJ 100 where in this Court held that Rule 66 is mandatory and non-compliance of the same renders the review petition in-competent. In the above referred case the review petition was not accompanied with the certificate. However, in the present case there is a certificate though not made part of the review petition, but attached with the same. Held, appending the certificate with review petition even on a separate sheet and a little variance in the text of the certificate as contained in the Rule does not render the review in-competent as is substantially complies the rule.

- *Chamber of Commerce and Ors. v. Ashok Kumar Gupta & Ors., 2004 (1) JKJ-H.C 81.*

In another case Hon'ble Single Bench while dealing with Rule 66 of High Court Rules 1999 observed as under:

"10. I have considered both the certificates, the one prescribed under Rule 66(1) of the High Court Rules and other appended to the review petition. It is true that the certificate appended to the review petition, is not the same as prescribed under Rule 66(1) of High Court Rules. However, from the text of both the certificates, one can conveniently make out that it conveys the same intention which is evident from the one prescribed under rules."

"11. I am of the considered opinion that the certificate at the foot of the review petition substantially complies the rules. This contention of the learned counsel is also rejected."

The review petition was allowed, order set aside and revision petition revived.

- *Bansi Lal v. Mohan Lal, 2004 (1) JKJ 536-HC.*

INTERLOCUTORY MATTERS

67. Civil/Criminal Miscellaneous Petitions.— (1) All applications made during the pendency of an appeal, reference, petition or other matters presented to and pending in the High Court and connected with the same or with any decree, order or sentence or other proceeding of the subordinate court which is the subject matter of the same, and praying for any interim relief or order, shall be called Civil/Criminal Miscellaneous petition and be registered serially and separately in each appeal, petition, reference or matter as the case may be.

(2) All applications made after the disposal of any such appeal, petition or reference or other matter, connected with it or with any decree or order passed therein, other than those for review of any judgment of this court or for leave to appeal to Supreme Court which shall be designated as petitions under Rule 55, shall also be called Civil/Criminal Miscellaneous petition and be numbered as provided for in sub-clause (1).

68. Every Civil / Criminal Miscellaneous Petitions shall be supported by an affidavit.— Every Civil/Criminal Miscellaneous petition shall be supported by an affidavit.

Where, however, the facts on which the application is based appear from the records in this Court or relate to any act or conduct of the applicant's Advocate himself, the Registrar may permit a memorandum of facts signed by applicant's Advocate to be filed instead of an affidavit.

69. Entitlement of every Civil/Criminal Miscellaneous Petitions in the main matter in which made.— Every Civil/Criminal Miscellaneous petition shall be entitled in the main matter in which it is made and shall set out the names of the applicants and the respondents and their respective ranks in the main matter, the provision of law under which the application is made and the prayer or relief sought in clear and precise terms. The application shall be signed by the applicant or his Advocate who shall enter the date on which such signature is made or the application is presented. All facts on which the applicant relies for making the prayer or obtaining the relief sought in the application, shall be set out in the affidavit or wherever permitted in the memorandum of facts under rule 68.

70. Filing of urgency Memo.— In case of urgency the applicant may make a written request to the Registrar to post a Civil/Criminal Miscellaneous petition before the appropriate bench for urgent orders. When such a request is made in respect of an application of the nature described in Rule 67(1), the Registrar shall take steps to complete the examination of the papers of the appeal or petition or other matter as the case may be in which the application is made, if such examination has not already been completed and post the application together with papers of the main case, before the appropriate Bench.

71. Urgency memo in Civil/Criminal petition be filed before Registrar.— Requests of the nature described in rule 70 shall ordinarily be made to the Registrar, and the Civil/Criminal petition in respect of which the request is made together with all the necessary papers of the main appeal or petition, shall ordinarily be posted in the forenoon of the succeeding working day when an appropriate Bench is sitting.

72. Service of notice to parties shall be accompanied by copy of application/supporting affidavits etc. under proper receipt.— In appeals and petitions in which notice to respondent has already been issued, a Civil/Criminal Miscellaneous petition shall not be numbered or posted unless parties to the appeal or petition affected by the application who are represented by Advocates have been served with notice of the application by delivering to each of such Advocates a copy of the application together with a copy of the supporting affidavit or memorandum of facts and the written acknowledgment over the signature of each such Advocate or his registered clerk is taken either by endorsement on application or otherwise and is filed in the court along with the application. If, however, the applicant's Advocate makes an endorsement on the application that such service

on Advocate was either refused to be accepted or could not be effected in spite of due diligence, the Registrar may direct that the application be numbered and posted. Wherever it is intended to move the application as an emergent application, the copy of the application served on every Advocate under this Rule shall contain an endorsement stating that the application is intended to be moved as an emergent application on the day specified in the endorsement.

73. Order passed in miscellaneous application.— An order passed by the Court in a Miscellaneous application before service of notice on the respondent to the application shall not be communicated to the subordinate court or the authority or the party affected by it unless the applicant has filed in the court a memo in prescribed form for service of notice of the application on parties to whom notice has to be given or is directed by the Court with the appropriate amount of process fee affixed thereto in court fee stamps together with as many plain paper copies of the application and the supporting affidavit or memorandum of facts as there are parties to be served, or unless the applicant himself has served such notice and produces into court proof of such service.

74. Notice of application shall be issued only when ordered by the Court.— (1) Except in cases in which it is otherwise provided by these rules, notice of an application shall issue only when ordered by Court.

(2) Unless the court orders otherwise, notice of a Miscellaneous application need not be given to a party who having been served with the notice in the main appeal or petition, has not entered appearance or to a party to whom notice in the main appeal or petition has been dispensed with under the provisions of Order XLI, Rule 14 of the Code of Civil Procedure.

(3) Where notice of an application has to be given an applicant shall, within three days from the date of the order directing notice, file in the Court a memo in prescribed form for service on parties to whom the notice has to be given or has been directed with the appropriate amount of process fee affixed thereto in court fee stamps together with as many plain paper copies of the application and the supporting affidavit or memorandum of facts as there are parties to be served .

Provided that where the party to be served is represented by an Advocate in the main appeal or petition, notice of the application may be served on the Advocate in the manner hereinbefore prescribed in Rule 72.

CHAPTER-VIII

PRESENTATION AND EXAMINATION OF PAPERS

75. Every Memorandum of appeal, petition, application be addressed to High Court of J&K followed by description of papers.— Every memorandum of appeal, petition or application and every affidavit and every other memorandum or list or paper other than documents tendered in evidence presented to the High Court shall be headed as follows:—

In the High Court of Jammu and Kashmir at Srinagar/Jammu followed by the description of the paper such as memorandum of appeal, memorandum of petition, miscellaneous petition as the case may be followed by the provision of law under which the same is presented or made.

76. Every Memorandum of appeal, petition, application shall be fairly and legibly written/typed or printed.— Every memorandum of appeal, petition, affidavit, miscellaneous petition or other memorandum or list presented to or filed in the High Court (other than original documents) shall be fairly and legibly written, typed or printed or partly so written, partly typed or partly printed on strong and durable foolscap paper with another margin of not less than 5 cms. and an inner margin of not less than 3 cms. The writing, typing and printing shall be made on one side of the paper and every set of papers shall be stitched bookwise with pages serially numbered and be provided with an index, the index shall be on paper of the same size and strength mentioned above shall be stitched as the first sheet of the papers.

Where certified copies of judgments, decree or orders of subordinate courts and Tribunals produced with an appeal, petition or application or for any other purpose are in manuscript, typed copies thereof conforming to the above specifications, shall be produced along with the certified copies.

77. Every Memorandum of appeal, petition, application shall be presented through recognized agent.— Except in cases hereinafter mentioned every appeal, petition, application or other document presented to the High Court shall be presented by party making such appeal, petition or application or by his recognized agent as defined under order III, Rule 2 of the Code of Civil Procedure/ or by

his Advocate or his registered clerk or by another Advocate deputed by such Advocate. No paper intended to be presented to the High Court in any Judicial matter or proceeding shall be presented by post or be presented otherwise than is provided for by this Rule.

78. Provision of Rule 77 shall not apply to appeals/petition by person in jails.— Rule 77 shall not apply to appeals or petition by person in jail or in duress or restraint or to any petition, reference or other matter made or presented to the High Court by or on behalf of any Court, Tribunal or Authority, exercising judicial or quasi judicial functions.

79. All papers in judicial matters shall be presented at the office of Registrar.— All papers on judicial matters shall be presented at the office of the Registrar of the High Court on working days during the working hours. The Registrar may in special cases receive or direct the same to be received by the office after working hours or any day. In very urgent matters, the Registrar, may if satisfied about the urgency, receive any papers at his residence on holidays and take the directions of the Chief Justice or in his absence, of the senior most judges present in city as to the further action to be taken on papers so received by him at his residence.

80. No appeal, petition, or application shall be received during vacations of the Court except in cases of urgency.— No appeal, petition, application or the like in Judicial matters shall be received during vacation of the Court except in cases of urgency in accordance with the rules from time to time made by the Chief Justice for the disposal of urgent matters during vacation.

81. Appointment of receiving clerk(s) by Registrar.— The Registrar shall appoint one or more clerks as receiving clerk or clerks to receive the papers in judicial matters presented to the High Court.

82. Every Memorandum of appeal, petition, application shall be accompanied by list of papers in prescribed form in duplicate.— Every appeal, petition, application or the like presented to the High Court, shall be accompanied by a list in prescribed form in duplicate setting forth all the papers filed therewith and particulars of all Court fee paid in respect of the same.

83. Checking of papers by receiving clerk.— Immediately on receiving the papers, the receiving clerk shall check all the papers and the court fee, if any paid thereon with reference to the list referred to in the last proceeding rule, and on being satisfied that the papers and the Court fee mentioned in the said list have actually been filed and paid, shall return one copy of the list to the party

presenting the same or his Advocate duly signed by him affixing thereto the seal of the High Court containing the date of presentation of papers.

84. Particulars of papers and Court fee shall be entered in the register.— The particulars of the papers and the Court fee shall then be entered in the Register or Registers prescribed for the purpose either by the receiving clerk or such other clerk as may be appointed for the purpose.

85. All papers shall be forwarded to Examiner's Section.— All the papers shall then be forwarded to Examiner's Section for purpose of examination.

86. Duty of Examiner to examiner all papers allotted to him.— It shall be the duty of the examiner to examine all papers allotted to him for examination with a view to see that the papers are presented within the time prescribed by law for their presentation, that proper court fee payable thereon has been paid, that the papers are in proper form, that the enclosures required by law or by these rules have been furnished and that the papers comply in all respects with provisions of law and the rules applicable to them.

87. Examiner shall attach his examination report stating whether the requirements have been complied with.— In connection with every set of papers presented and examined, the examiner shall attach one or more sheets entitled the Examination Report in prescribed form. In the said report the Examiner shall record whether the papers comply with the requirements stated in the preceding rule or they are in any manner defective and if there are any defects, shall record the same in the report. He shall then place the report before the Registrar for his orders.

88. After examination Registrar shall, order the same to be admitted and numbered.— (1) The Registrar after reading the report of the Examiner and looking into the papers examined wherever necessary shall, if all the papers are in order, direct that the appeal, petition or other matter be admitted to register and numbered. If there are any defects, the Registrar shall direct such amendments or corrections in the papers as may be necessary be carried out within ten days. On failure to do so, the Registrar will post the matter before the Court pointing out these deficiencies.

(2) A list of papers directed to be rectified shall be put upon the Notice Board giving the particulars of the same and name of party presenting the same or his Advocate. The time fixed by the Registrar

for rectification shall be counted from the date on which the list is so put up on the Notice Board.

89. All Memoranda, endorsements or notes or orders in the Examiner's report.— All memoranda, endorsements or notes or orders in the Examiner's Report by the Examiner or the Registrar or by the party or his Advocate in answer to the notes of the Examiners or orders or directions of the Registrar, shall be recorded in the Examiner's report in the order in which they are made. Additional sheets wherever necessary shall be added to the Examiner's Report.

90. All Memoranda, endorsements or notes or orders in the Examiner's report shall form part of the record.— The Examiner's Report and all endorsements, notes, orders, etc. thereon shall form part of the record and all parties to the appeal, petition or other proceeding to which the report relates shall be entitled to inspect the same and to receive certified copies of the same.

91. The petitions shall be admitted and numbered after the removal of defects, if any.— When all defects pointed out have been corrected and requisitions made have been complied with and all the papers are finally found to be in order, the appeal, petition or other matter shall be admitted to the register and numbered.

CHAPTER-IX ISSUE AND SERVICE OF NOTICES

92. Issue of notice in appropriate form. When cases are admitted and notice to respondents directed therein, the Registrar shall cause notice to issue in appropriate forms prescribed for the purpose, signed by the Registrar and sealed with the seal of the Court.

93. All notices shall be entered in the respective appeal, petition or other proceedings.— All notices issued shall be entered in the respective appeal, petition or other proceeding in which they are issued and shall specify the date fixed for the hearing of the matter or respondent's appearance. 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 or service of the notice so as to allow the respondent sufficient time to appear and answer the appeal, petition or application in which the notice was issued.

94. Date mentioned in the notice shall not be earlier than 30 days unless otherwise directed.— Unless the Court otherwise directs or rule so provide the date fixed for hearing or appearance as stated in the notice, shall not be earlier than 30 days in the case of appeals

and 15 days in the case of petitions and applications from the date of issue of the notice.

95. Notice shall declare that in the default of attendance matter will be heard in absence.— Every notice to respondent shall declare that if he does not appear on the day fixed in the notice, the appeal, petition or other matter in which the notice is issued will be proceeded with and heard in his absence.

96. Notice shall be served in the manner prescribed in the Code of Civil Procedure.— Notice shall be served in the manner prescribed in the Code of Civil Procedure for the service of summons upon a defendant in a suit subject as hereinafter provided for.

97. Service of notice to Government Servant be made through Head of the Department.— When the service is to be effected on a Government servant, the Court may, on an application made for the purpose, direct that the notice shall be sent to such Government servant through the Head of the Department concerned (to whom such notice may be forwarded by registered post) for service.

The party seeking such service shall furnish along with his application, postal covers containing the correct name and designation of the Government servant and of the Head of the Department concerned on whom service is to be affected and also the postage stamp sufficient to cover registration charges.

98. In all pre-decree cases, notice shall be served on Advocate.— In all pre-decree cases, notice shall be served on the Advocate or other legal practitioner appearing for the party in the main proceeding pending in the lower court out of which the appeal, petition or other matters arises. When such an Advocate or Legal Practitioner appears for more parties than one in such proceeding, service under this rule on the said Advocate or practitioner shall be made on behalf of all the parties for whom the said Advocate or practitioner appears. Service under this rule shall be deemed to be sufficient service as if it has been made on the party direct.

99. In all civil miscellaneous Petitions/matters notice shall be made to the Advocates.— In all Civil Miscellaneous petitions or matters before the High Court service of notice on parties represented by Advocates in the main case shall be made on Advocate representing the parties in the main appeal, petition or matter in the High Court as provided for in Rule 74. The provisions as to service of notice shall apply in all interlocutory matters unless otherwise ordered by court in any particular case.

100. Where party is represented through Advocate, his address for service will be of that of Advocate.— Where a party appears through an Advocate in the High Court his address for service shall be that of the Advocate and all notices and processes in the appeal, petition or other matters and all Civil Miscellaneous petitions therein shall be sufficiently served if left by a party or Advocate or by a person employed by the Advocate or by an officer or employees of the Court between the hours 10 A.M. and 5 P.M at the address for service of the party to be served.

101. Notice at the first instance shall be sent by registered post.— Unless otherwise directed by Court every notice in respect of proceedings in the High Court, other than those which may be served on Advocates under the provisions of Rule 99 shall be sent in the first instance by registered post. Provisions of rule 4 of Order XLI-A of the Code of Civil Procedure shall apply to notices issued under this rule.

102. Fixation of same date for hearing or appearance in application/appeal etc.— In all appeals or revision petition against Interlocutory orders of subordinate courts if an interim order is passed by the Court on any application made in the appeal or revision petition with a direction to issue notice to the respondents in the application, notice shall be issued simultaneously fixing the same date of hearing or for appearance both in the application and for the appeal or revision petition on payment of a single process fee in respect of the respondents common to both the application and the appeal or revision petition and separate process fee in respect of the respondents who are parties to the appeal or revision petition but not parties to the application. Unless the Court otherwise directs the appeal or revision petition and the application shall be posted together for final disposal within 20 days after the service of notice on the parties.

103. When date is specified in the notice, it shall not be posted before the said date.— When a date is fixed for hearing or appearance and is specified in the notice, the matter in which the notice was issued shall not be posted before the said date. When notice has been served and service is held sufficient, no further notice of posting or adjournments shall be necessary except through publication in the Cause Lists and on the Notice Board of the Court.

104. When notice issued received unserved, intimation of same shall be given on notice board.— When notice issued to a party through court is returned unserved, an intimation of the fact shall be given on the Notice Board of the court. Such intimation shall be put

upon the notice board on the first working day of every week and shall contain the following particulars.—

- (i) the number of the proceeding on the file of the High Court;
- (ii) the name of the Advocate of the party at whose instance the notice was issued; and
- (iii) the name of the party not served and the reasons for non service.

Unless a different period is fixed by the Registrar which shall be noticed in the said intimation, the party or his Advocate at whose instance the original notice was issued, shall, except when the notice has not been served because the respondent is dead, deposit into Court further process fee for the service of fresh notice and shall give particulars necessary for serving it within ten days from the date on which the intimation is put up on the Notice Board. If fresh notice is also returned unserved, the same procedure shall be repeated.

105. If notice is not served on two occasion in ordinary way, matter shall be posted before Registrar for further orders.— If a notice issued to a party through Court is not served in the ordinary way on two occasions, the matter shall be posted before the Registrar for further orders. If the Registrar is satisfied that the party intended to be served is keeping out of the way for purposes of evading notice, or that for any other reason the notice cannot be served in the ordinary way the Registrar may order substituted service in the ordinary manner prescribed by the Code of Civil Procedure. The party or Advocate at whose instance the notice was issued shall be at liberty to make an application supported by an affidavit for substituted service even if two attempts at service in the normal way have not been made and the Registrar may, if he is satisfied as aforesaid, order substituted service.

106. Provision shall apply *mutatis mutandis* to notice in reference made to High Court.— These provisions shall apply *mutatis mutandis* to notice issued in respect of references made to the High Court.

107. Where several minors are represented by a single guardian, single process fee shall be charged.— Where several minors are represented by a single guardian, a single process fee shall be charged for service on all such minors. Where a guardian of a minor party or parties is himself a party to the proceeding, a single process fee shall be charged for both the minor party or parties and the guardian in his personal capacity.

108. No process fee shall be charged for notices issued in respect of Criminal appeals, revision or references.— No process fee shall be charged for notices issued in respect of Criminal Appeals or references or revision except in case of appeals or revisions against acquittal at the instance of private complainants or parties.

109. No process fee shall be charged for notice issued in respect of references other than those mentioned in the last preceding Section.— No process fee shall be charged for notice issued in respect of references other than those mentioned in the last preceding rule where reference is made by a subordinate court *suo moto* and if made on the application of a party, the same party shall pay the process fee for notices issued in respect of such references.

CHAPTER-X

PREPARATION OF RECORDS OF CASES

110. Notices or requisitions to subordinate Courts for transmission of record shall be signed by the Registrar.— Notices or requisitions to subordinate courts for transmission of papers to the High Court under or in the manner prescribed by rule 13 of order XLI of the Code of Civil Procedure shall be prepared and signed by the Registrar.

111. It shall not be necessary to call for record unless directed by the Court before admission of the Case. Unless the Court otherwise directs it shall not be necessary to call for records from Subordinate Courts before a case is admitted.

112. In case of interlocutory orders, only the papers in that regard be called and unless proceedings are stayed need not call for the record.— In case of appeals or revision petitions preferred against interlocutory orders made by Subordinate Courts prior to decree or prior to final disposal of the matter pending before the said Subordinate Court, only the papers relating to the particular interlocutory matter need be called for, and unless stay of proceedings is ordered by the High Court, it shall not be necessary to call for any other papers relating to the main proceeding pending on the file of the Subordinate Court. If reference to any such other paper is necessary the parties requiring the same shall produce certified copies thereof.

113. Printed or type written copies be prepared for the Court.—
(1) Printed or typewritten copies shall be prepared for use of court and the parties at the hearing of cases of all material papers as hereinafter provided. The copies so prepared shall be called the paper book of the case. The printing or typing shall be made on substantial

white foolscap, folio paper with an outer margin of about 1.5 inches and inner margin of about 1 inch and separate sheets shall be stitched together bookwise. The pages shall be consecutively numbered and the printing or typing shall be on one side of the paper. Every 10th line on each page shall be numbered.

(2) No paper book need be prepared in appeals and revisions against interlocutory orders. Parties desiring to refer to any paper shall file into court two typed copies thereof and furnish one such copy to every Advocate appearing in the case.

114. Paper Book shall consist of two parts; Principal pleadings and the evidence.— The paper book shall consist of two parts. Part I comprising the principal pleading of the case including judgments and orders of subordinate courts and part II comprising the evidence in the case both oral and documentary.

115. Papers included in Civil Appeal/Revision cases.— (1) In civil cases the following papers shall be included in a paper book. These papers are hereinafter called compulsory papers:—

- (a) **In Regular First Appeals.**— Plaintiff, written statements, reply or rejoinder, if any, issued unless they are fully set out in the judgment in the suit, judgment and decree in the suit and the memorandum of appeal to the High Court.
- (b) **In Regular Second Appeals.**— Plaintiff, written statement, reply or rejoinder, if any, appeal to the lower appellate court, judgment and decree of lower appellate court and memorandum of Second Appeal.
- (c) **In Miscellaneous First Appeals.**— All papers corresponding to those set out in clause (a) with reference to the original proceedings in which the order is passed.
- (d) **In Miscellaneous Second Appeals.**— All papers mentioned in clause (c), memorandum of appeal to lower appellate Court, judgment and order of lower appellate court and the memorandum of appeal preferred to the High Court.
- (e) **In Civil Revision Petitions.**— The Judgments and orders set out in Rule 57 and the memorandum of the petition to this court.
- (f) **In other Civil Petitions or References.**— Such papers selected by the Registrar by applying clause (a), (b), (c) or (d) as the case may be, mutatis mutandis.

(2) (a) Schedules to plaints, written statements or other similar pleadings may be omitted from compulsory papers unless they have a

bearing on the matters in dispute in the appeal or petition, as the case may be, and are required by the parties to be included in Part I.

(b) Schedules to decrees may be omitted unless the Registrar considers that they are necessary for the disposal of the appeal petition, as the case may be, or the parties require the same to be included.

(c) In partition suits, the Registrar shall decide whether the reports of Commissioners appointed for effecting partitions shall be included among the compulsory papers.

(d) Parties may require that the Judge's notes or order sheet or similar record showing the progress of proceedings in sub-ordinate Courts should be included in Part I.

(e) Memorandum of Cross Objections, if any, shall be annexed to Part I.

(3)(a) Papers to be included in Part II shall be such as the parties require to be so included.

(b) It shall be open to the parties to select only portions of a document to be included in part II of the paper book and omit rest of the document, subject to clause (c) and (d) of this sub-rule.

(c) Where a question of interpretation of any document or clause thereof is involved in an appeal or petition either the whole of the document or such portion thereof as has bearing on the requisition of interpretation shall be included.

(d) When oral evidence of any witness is sought to be included the entire evidence of such witness shall be included provided that where any portion of the oral evidence of any witness given in another case is marked as an exhibit it would be sufficient to include that portion only.

116. Papers included in Criminal Appeal/Revision cases.—

Criminal Appeals and References for confirmation of a sentence of death, charge-sheet, judgment and memorandum of appeal or reference, as the case may be, shall be included in Part I and the entire evidence oral as well as documentary shall be included in Part II.

In Criminal Revisions, Judgments and orders mentioned in Rule 57 and the memorandum of petition to this court shall be included in Part I and Part II shall consist of such papers as the parties may require to be included therein.

In other criminal matters, the Registrar shall decide what papers shall be included in part I by applying the provisions of this rule.

mutatis mutandis and part II shall consist of such paper as the parties may require to be included therein.

117. Every paper Book shall be provided with an Index or list of contents.— Every paper book shall be provided with an index or list of contents. The documents included in Part II shall be arranged in chronological order mixing up the papers pointed out by several parties to the proceeding provided that where any correspondence relating to a particular matter or papers relating to any particular proceeding in subordinate courts are included such correspondence or such papers may be clubbed together separately in chronological order.

118. Paper Book shall be printed in all Regular Appeals, All Miscellaneous First Appeals, Criminal Appeal against sentence and all Criminal References.— The paper book shall be printed in the following cases:—

- (a) All Regular First Appeals.
- (b) All Miscellaneous First Appeals, where the value or amount of the subject matter in dispute both in the Court of the first instance and in the appeal before the High Court exceeds Rs. 10,000/-.
- (c) All Criminal Appeals against the sentence of death.
- (d) All Criminal References for confirmation of the sentence of death.

119. Paper Book in all other cases shall be type written.— Paper book in all other cases shall be type written.

120. To dispense with printing the paper Book privately in civil cases.— In civil cases parties may apply to Court to dispense with printing or for permission to print the paper book privately wherever printing is compulsory under Rule 118 or to print the paper book of a case required by these rules, to be type written, or to exclude any of the compulsory papers from the paper book and the Court may pass such order as it thinks fit on such applications on such terms and conditions as it may deem fit to impose. If such a petition is uncontested it may be disposed of by the Registrar.

121. Printing and typing in all criminal matters shall be free of cost.— Printing and typing in all criminal matters shall be free of costs to the parties, except in appeals or revisions against acquittal by private complainants or parties in which the appellant or petitioner shall pay the charges.

122. In cases where the paper Book is typed or permitted to be printed privately, parties may prepare the same.— In cases where the

paper book is to be typed or is permitted to be printed privately, parties themselves may prepare the paper book. In such a case they shall furnish for use of Court such number of copies as are required by these Rules to be prepared for use of Court and also furnish free of cost one copy of the paper book prepared by them to every Advocate appearing in the case and file into Court their written acknowledgment for having received such copies.

123. Except where the parties undertake to prepare, all printing shall be done under the supervision of Registrar.– Except in cases where the parties themselves undertake to file or are permitted by Court to file paper books typed and prepared by them, all printing shall be done by or under the supervision of the Registrar and all typing shall be done in the office of the Registrar.

124. In cases where printing/typing is done through Court, appellant/Petitioner shall deposit the amount so fixed within ten days.– In every case where printing or typing is done through Court, the appellant or petitioner shall within ten days of the date on which the admission of the case as put up on the notice board deposit into court the amount as may be fixed by the Chief Justice together with a memorandum that he proposes to point out the papers to be included in part II of the paper book. Every respondent shall file into Court within ten days of entering appearance a memo stating that he proposes to point out the papers to be included in part II of the paper book.

125. Issuance of notice by the Registrar to parties to point out the papers to be included in the part II of the paper Book.– (1) As soon as may be practicable after the memorandum referred to in the last preceding rule has been filed into Court, the Registrar shall issue to the party filing the memo a notice to point out the papers which he requires to be included in part II of the paper book fixing a time within which to do so.

Every party so pointing out shall lodge in the office three copies of a list of papers pointed out by him; every other party shall be entitled to inspect the said list and take one copy of these so lodged; when two of the copies lodged have been taken away every party coming in to inspect thereafter will be entitled to make out and take a copy whereof.

(2) After the pointing out is completed the Registrar shall prepare and serve on the party pointing out or his Advocate an estimated bill for preparing the papers pointed out by him, fixing a time within which the amount shall be paid which time shall not be less

than 30 days in the case of appeals and fifteen days in other matters.

126. Preparation of papers pointed out by parties.— Preparation of the papers pointed out by parties for inclusion in Part II of the paper book shall not be taken up unless the estimated bills therefor have been paid by the parties concerned.

127. Paper not included in the language of Court shall be translated in the language of the Court.— (1) Wherever any paper to be included in the paper book is not in the language of the court it shall be translated into language of the court at the expense of the appellant or petitioner if it is a compulsory paper or a paper pointed out by him for inclusion in the paper book and in other cases at the expense of the party who requires it to be included in the paper book.

Provided, that it shall not be necessary to translate into English documents and other papers which are in Urdu.

(2) The court may on application made by any party, in its discretion direct that any document required to be translated need not to be translated.

128. Translation shall be done by the translator of the Court.— (1) Wherever a paper has to be translated under the last preceding rule, the translation shall be done by any of the official translators of the court.

(2) Notwithstanding anything referred in sub-rule (1), the Chief Justice may appoint any Advocate as an authorised translator and parties if they so desire may get any paper required to be translated by these rules translated by such authorised translator provided that no authorised translator shall translate any document in a case in which he appears for any party.

129. Registrar shall determine the minimum number of copies of paper Book to be prepared.— (1) The Registrar shall in each case determine the minimum number of copies of the paper book to be prepared for use at hearing. Such number shall comprise sufficient number of copies for use of court (which shall be at least two more than the number of judges constituting the appropriate Bench in relation to the case) and copies which the parties are entitled to receive under sub-rule (2). The number of determined in hereinafter referred to as the standard number.

(2) Every party to a case who has entered appearance within the time limited therefore shall be entitled to receive one copy of the paper book, provided that where several parties are represented by a single Advocate only one copy shall be supplied to such Advocate

unless the Registrar in his discretion directs that he be supplied with more copies than one.

(3) Advocates requiring additional copies should state the number in the Memos filed under rule 124.

130. Rule of charges for printing, typing and translating of papers shall be as prescribed by the Chief Justice.— Rates of charges for printing, typing and translating of papers and documents both shall be such as may be prescribed from time to time by the Chief Justice.

131. Calculation of cost of preparing paper book.— (1) Calculation of the cost of preparing the paper book and the levy of charges in respect of it shall be governed by the provisions of this rule.

(2) Cost of preparing each paper or document shall be first calculated separately. It shall comprise.

- (a) Cost of composing the text for printing the first copy ;
- (b) Cost of paper necessary to print standard number of copies thereof; and
- (c) Charges of translation, if any.

(3) Cost of one additional copy of the entire paper book shall be calculated separately. It shall comprise only the cost of paper and printing and shall not include the cost of composing the text for printing and charges for translation.

(4) The appellant shall be required to pay the cost calculated under sub-rule (II) of preparing every paper or document including in Part (I) of the paper book (other than cross objection) and of preparing every paper or document pointed out by him for inclusion in part (II) of the paper book. On payment of the total cost so calculated, he shall be entitled to receive one copy of the entire paper book.

(5) The respondent shall be required to pay the cost calculated under sub-rule (2) of preparing every paper or document pointed out by him for inclusion in part II of the paper book and of preparing the memorandum of cross objections if any filed by him. On payment of the total cost so calculated he shall be entitled to receive one copy of the entire paper book. If he has not pointed out any papers and has not filed any cross objections he shall be entitled to one copy of the entire paper book free of cost.

(6) Parties requiring copies of the paper book in addition to the first copy shall pay for every such additional copy the cost thereof calculated under sub-rule (3).

(7) The provisions of this rule shall apply to typing of the paper book with the following modifications, namely, that there will be no item corresponding to "Composing the text for printing" and in calculating the cost of typing for additional copies the rate shall be one forth the rate for typing the first copy.

132. If the amount paid under rule 124 falls short of actual amount, the copies shall be issued after the balance amount is deposited.—If the amounts paid under rule 124 fall short of the actual cost of the copy or copies of the paper book required by a party, the copy or copies shall be issued only on the party paying the short fall for which a bill shall be issued to the party. If the amounts already paid are in excess of such actual cost; the excess shall be refunded to the party.

133. Advocate shall be personally responsible for payment of charges.—(1) An Advocate shall be personally responsible for payment of charges in respect of compulsory papers of Part I and of the other paper pointed out by him for inclusion in Part II of the paper book for his client.

(2) The Registrar may refuse to issue paper book in any case to an Advocate who has not paid any of the charges in respect of any case which he is personally responsible to pay under sub-rule (1).

CHAPTER-XI ORIGINAL CIVIL JURISDICTION

A. EVIDENCE

134. On examination of party, advocate by the Court, the substance of such examination be reduced in the language of the Court by Judge or his dictation, forming part of the record.—When at first or at any subsequent hearing of a suit, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suits by whom such party or his Advocate is accompanied is examined by the Court the substance of such examination shall be reduced to writing, in the language of the Court by the Judge or at his dictation and shall form part of the record.

135. The evidence of witness shall be recorded in narrative form in the language of the Court by the Judge or under his superintendence.—(1) The evidence of each witness shall be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge not ordinarily in the form of question and answers, but in that of a

narrative, and, when completed shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary correct the same, and shall sign it.

Provided that if the witness is conversant with the language in which his statement is recorded, the witness shall append a certificate "Read and found correct" and sign his deposition in presence of the Judge.

(2) The Court may, while recording the statement of a witness, allow or disallow an objection taken by either party.

(3) The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

136. Where witness is about to leave jurisdiction of Court, his evidence can be recorded at any time at the instance of the party.—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 the manner hereinbefore provided.

137. In case of death, transfer or other cause, the judge whom the case is subsequently assigned, may deal with evidence as if it was recorded by him.—If the Judge who has recorded evidence or caused it to be recorded in his presence under the foregoing rules is prevented by death, transfer or other cause from concluding the trial of a suitor ceases to be attached to the Court before the conclusion of the trial of a suit, the Judge, to whom the suit is subsequently assigned by the Chief Justice, may deal with any evidence recorded under the foregoing rules as if such evidence has been recorded by him or under his direction under the said rules, and may proceed with the suit from the stage at which it was left by his predecessor.

B. JUDGEMENTS, DECREES AND ORDERS

138. Pronouncement of Judgment.—(1) The Court, after a 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 Advocates or it may announce the operative portion of the judgment leaving a reasoned judgment to be followed thereafter which shall bear the date of announcement of the operative portion as also that of the reasoned judgment.

Notification in the Cause List shall be deemed to be sufficient notice under this rule.

(2) All Judgments and Orders shall be written, recorded, drawn and signed either in English or in Urdu.

(3) Where a case is heard by a Judge sitting alone and judgment is reserved, his judgment may, when he is not readily available, be pronounced by any other Judge.

(4) Where a case is heard by two or more Judges and judgment is reserved, their judgment or judgments may be pronounced by any of them. If no such Judge is readily available such judgment or judgments may be pronounced by any other Judge.

139. Preparation and contents of decree of formal order.—(1) After a suit or a proceeding in the nature of a suit has been heard and decided, a decree or formal order shall be drawn up by the Registrar in conformity with the judgment and signed by him and sealed with the seal of the Court. The decree or formal order shall bear the same date as the judgment or order as the case may be.

(2) The decree or formal order shall be drawn up in the language of the Court and shall bear the date of the day on which the judgment or order upon which it is founded was delivered. It shall contain the nature, number and year of the case, the names with, description of the parties, the names of their Advocates, and a clear specification of the relief granted or other adjudication made. It shall also state the amount of costs incurred in the case and by whom and in what proportion such cost are to be paid.

(3) (a) Where the Court has passed an order that the parties shall pay their own costs or has passed no order as to cost, no costs shall be allowed on taxation except such sum as they have been ordered to be paid by a party irrespective of the result of the case;

(b) Where a party is only partially successful and costs are ordered to be paid in proportion to the success of such party the amount of all taxable costs payable to it shall be proportionally reduced.

(4) As soon as a decree or a formal order has been drawn up, the Registrar shall cause a notice to be exhibited on the notice board stating that such decree or order has been drawn up and that it may be inspected by any party or by his Advocate within ten days from the days from the date of the posting of the notice.

(5) When such notice has been posted, any party or his Advocate may, before the expiry of the time prescribed in the last preceding sub-rule, inspect the decree or the formal order as the case maybe, and either sign it or file an objection to it on the ground that there is a clerical error or omission in the decree, or the

formal order, or that the decree or the formal order is not in accordance with the judgment. Every such objection shall state clearly what the clerical error or omission is or in what respect the decree or formal order is not in conformity with the judgment and it shall be signed and dated by the party objecting or by his Advocate.

(6) When any objection is filed under the last preceding sub-rule the Registrar shall put up the case together with the judgment therein, the draft decree or formal order and the objection for orders before the Judge or Judges, or one of them, who delivered the judgment, or if such Judge or Judges has or have ceased to be attached to the Court or be absent on account of any cause, then before such Judge or Judges as the Chief Justice may direct.

(7) If no objection is filed under sub-rule (5) of this rule the Registrar shall sign the decree or formal order and seal it with the seal of the Court on the expiry of the period specified in the aforesaid sub-rule.

(8) In case of any doubt or difficulty with regard to a decree or order made by the Court, the Registrar shall, before issuing the draft, submit the same to the Court.

140. The decree passed or any order made by the Court shall be transmitted to by the Registrar for compliance.—A decree passed or any order made by the Court, in any proceeding shall be transmitted by the Registrar for compliance to the Court or the authority to which it concerns.

CHAPTER-XII

CIVIL APPELLATE JURISDICTION

141. Part B of the chapter XII of rules shall apply *mutatis mutandis* to appellate judgments/order.—Part B of the Chapter XII of these Rules relating to judgments, decrees and orders shall mutatis mutandis apply to appellate judgments, decrees and orders also.

142. Application for leave to appeal as a pauper.—(1) An application for leave to appeal as a pauper shall be received by the Registrar unless it is accompanied by the memorandum of appeal, nor a memorandum of appeal unless it is accompanied by an application for leave to appeal as a pauper.

(2) No such application or memorandum shall be received by the Registrar from any person other than the alleged pauper unless it appears, on the face of the application, that the alleged pauper is a person who is exempt, under section 132 or section 133 of the Code from personal appearance in Court.

(3) If such application or memorandum is presented by a person other than the alleged pauper, it shall not be received unless presented by a duly authorised agent who is in a position to answer all material questions relating to the application and who is willing to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

(4) Every such application presented by an agent shall state on the face thereof that the plaintiff is a person exempted from personal appearance in Court under the provisions of section 132 or section 133 of the Code and shall not be received by the Registrar unless it contains such statement.

(5) When an application or memorandum of appeal is one that the Registrar can not receive under the foregoing directions, he shall record or cause to be recorded thereon the name of the person presenting such application or memorandum, the date of its presentation, and an order returning the same for due presentation with the reason for such order, and shall sign and date such order with his own hand.

(6) The Registrar shall after he has received any such application or memorandum, because the personal appearance of the applicant or his duly authorised agent, in case the applicant is exempted from personal appearance in Court, before the concerned bench.

CHAPTER-XIII

MINORS AND PERSONS OF UNSOUND MIND

143. In case suit is instituted in the name of minor or person of unsound mind, affidavit shall be filed by his next friend.—(1) Where a suit is instituted in the name of a minor or a person of unsound mind the next friend shall file with the plaint an affidavit stating therein that he has no interest directly or indirectly adverse to that of the minor or the person of unsound mind, as the case may be, and that he is otherwise a fit and proper person to act as such next friend. In the case of minor plaintiff the age of the minor shall be stated.

(2) Whenever a defendant who is a minor or a person of unsound mind appears through his natural guardian or any person, other than an Advocate appointed by the court to act as his guardian, such guardian or person shall file an affidavit to the effect that his interests are not in any manner adverse to those of the minor or the person of unsound mind as the case may be.

144. On attaining majority if he elects to proceed, he shall file an affidavit with the application.— When a minor plaintiff or defendant, attains majority a defects to proceed with the suit without the next friend or the guardian as the case may be, he shall file an affidavit in support of his application to this effect and the Court may thereafter record the fact and discharge the next friend or the guardian.

145. For non-appearance of natural guardian for minor, Court may appoint Advocate as guardian.— In the event of non-appearance of the natural guardian of a minor defendant despite device or of his refusal to act as guardian, the Court may appoint an Advocate to act as guardian for the minor without any notice to the minor or his natural guardian.

146. If guardian appointed as no funds, plaintiff can be asked to provide money to the guardian to defend the case.— When a guardian appointed for a minor defendant is not in possession of any or sufficient funds for property defending the suit, on behalf of the minor the plaintiff may from time to time be ordered by the Court to advance money to the guardian for the purpose of his defence and all money so advanced shall form costs of the plaintiff in the suit. The order shall direct that the guardian shall, when so directed file in Court on account of money so received by him.

147. Provisions contained in this chapter and contained in Order XXXII of the Code shall apply to suits, appeals & applications of civil nature.— The provisions contained in this Chapter as also the provisions contained in Order XXXII of the Code shall, as far as practicable, apply to all suits, appeals and applications of civil nature, wherein a minor or a persons adjudged to be of unsound mind or a person who, though not so adjudged is found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting his interests, is a party.

CHAPTER-XIV

SUBSTITUTION OF LEGAL REPRESENTATIVES

148. Every application under Order XXII, Rules 3 & 4 of the Code in addition state approximately the death of deceased.— Every application under Order XXII, Rules 3 and 4 of the Code shall, in addition to any particulars required by law, state approximately the date of the death of the deceased party.

149. Every application under Order XXII of the Code shall as to the allegations be verified by affidavits.— Every application under Order XXII of the Code shall as to the allegations of fact contained i

such application, be verified by affidavit and shall ordinarily be presented to the Registrar who shall cause the date of presentation to be entered thereon.

150. Registrar shall examine the application and if it does not satisfy requirements, may return it or may place for orders.— The Registrar shall examine the application and if it does not satisfy the requirement of the Code or of these rules in that behalf may return it to the person presenting it, for amendment and representation within the time to be noted on such application under his signature or may place the application before the Court for orders.

151. Every person admitted on record as representative of deceased shall be described as "Legal representative".— Every person admitted on the record as the legal representative of a deceased party shall be described as "legal representative of AB deceased plaintiff or defendant or appellant or respondent (as the case may be)" and the record of the proceedings shall be amended accordingly in red ink.

152. The provisions of this chapter as well as contained in Order XXII of the Code shall apply to all proceedings of civil nature.— The provisions contained in this Chapter as also the provisions contained in Order XXII of the Code shall apply so far as may be practicable to all proceedings of civil nature.

CHAPTER-XV

PROCEDURE IN CRIMINAL CASES

A. CRIMINAL APPEALS

153. Criminal Appeals/Jail Appeals shall be presented in accordance with Chapter VI.— (1) Criminal appeals other than jail appeals shall be presented in accordance with the provisions of Chapter VI.

(2) Jail appeals may be received by post direct or through the officer incharge of the jail. In the case of such appeals, the Registrar shall place the petition of appeal with the copy of the judgment or order appealed against before the Bench constituted by the Chief Justice for admission, if the appeal is admitted, it shall be dealt with in the manner prescribed for appeals which are filed under sub-rule (1) above.

154. Registrar can refuse to receive appeal if it does not comply the provisions.— (1) A criminal appeal shall be in the form as provided by Chapter VI.

(2) The Registrar shall refuse to receive an appeal preferred under rule 153 (1) if it does not comply with the provisions contained in Chapter VI.

155. Appeal, before presentation be referred to examiner before it is posted for admission.— An appeal presented under rule 153 shall before posting the same for admission be given to the examiner concerned who shall report thereon whether it is within time and otherwise in order.

156. After admission of Appeal, Registrar shall send for record.— When an appeal has been admitted the Registrar shall send for the record, fix a date for hearing and cause notices to issue in the prescribed forms.

157. Notice shall be issued to Advocate General in appeal against conviction.— Where a Criminal appeal is by a convicted person, notice shall be issued to the Advocate General and in case where the appeal is by the Government, notices shall be issued to all the accused persons.

158. In case of prayer for bail; its copy of application shall also to be given to Advocate General at least 24 hours before its presentation.— Where a petition of appeal contains a prayer for bail or the appeal is accompanied by a separate application for bail, a copy of the same shall be given to the Advocate General at least 24 hours before the presentation of the appeal before the Registrar.

159. After the receipt of record, notices are served for and case is ready for hearing.— After the record of the lower court is received, the notices are served and case is ready for hearing, the Registrar shall list the appeal for hearing before the bench constituted by the Chief Justice.

160. Appointment of advocate at the cost of Government, where accused is not represented by Advocate.— Where the accused person is not represented by a counsel, the bench or the Chief Justice may, in a suitable case, direct the appointment of an Advocate at the cost of the Government. The fee of the Advocate so appointed shall be fixed by the Chief Justice.

161. Production of accused in custody before the Court to defend his case, where it is found necessary.— The court may, where it thinks fit to do so in the interest of justice, direct the production of an accused person in custody at the hearing of the appeal to enable him to argue his case or for other reasons.

162. On disposal of appeal, in case the conviction is set-aside, or reduced/changed, its information will at once be communicated by

the Deputy Registrar without waiting for judgment.— On disposal, if the conviction has been set aside or a reduction or change made in the sentence, the Deputy Registrar shall be once prepare formal order in accordance with the operative portion without waiting for the judgment and shall communicate the same to the concerned immediately.

B. CRIMINAL REVISIONS

163. Ways in which cases are taken up in revision.— Cases may be taken up in revision in the following ways namely:—

- (a) upon a report by a Sessions Judge under section 215 or 307 of the Code of Criminal Procedure;
- (b) upon a report by a Sessions Judge or a 'Chief Judicial Magistrate under section 437 of the Code of Criminal Procedure;
- (c) upon a petition received from jail;
- (d) upon a petition presented by a party;
- (e) upon an order by a Judge on perused of a Sessions Statement; or
- (f) upon an order by a Judge on examination of the periodical return or on inspection of the record of any case or otherwise.

164. Submission of report to the Court in revision.— Report submitted to the Court for revision of sentence or order under section 438 of the Code of Criminal Procedure, shall be in the form specified in Schedule A.

165. Revision on the basis of inspection/periodical returns /statement.— If a Judge upon a perusal of a Sessions Statement or upon an examination of a periodical return or upon inspection of the record of any case or upon a petition filed in the court orders .—

- (i) that the record be sent for, the Registrar shall immediately send for the record and on receipt thereof submit it to the Judge who passed the order;
- (ii) that a rule is issued, the Registrar shall fix a date for hearing and cause notices to issue in the prescribed form;
- (iii) that a rule be issued and the record sent for the Registrar shall fix a day for hearing and shall issue notices in the prescribed form and send for the record.

166. Procedure in appealable cases.— In appealable cases, a petition other than a petition forwarded by the Superintendent of a Jail or received by post from a prisoner in Jail presented to the Court for revision of the subordinate court of appeal under

Section 439 of the Code of Criminal Procedure may save when the Chief Justice directs otherwise be refused by the Registrar unless it accompanied by a certified or attested copy of the grounds of appeal taken in the lower appellate court.

167. Appointment of Advocate where accused is not represented by Advocate in cases of notice for enhancement.— In case in which notice has been issued to an accused person to show cause why the sentence awarded to him be not enhanced and the accused person is not represented by a counsel, the Bench or the Chief Justice may direct the appointment of an Advocate at the cost of Government the fees of the Advocate so appointed shall be fixed by the Chief Justice.

168. Revision against acquittal shall be heard along with appeal, if any.— A revision petition filed against an order of acquittal shall be heard along with the appeal, if any, preferred against such acquittal.

C. REFERENCE IN CAPITAL CASES

169. In case of proceedings u/s 133 Cr.P.C., Registrar shall cause the record to be examined forthwith and fix date for hearing with the approval of Chief Justice.— (1) When proceedings are submitted to the Court under Section 133 of the Code of Criminal Procedure the Registrar shall cause the record to be examined forthwith and entered in the concerned registers.

(2) If the record is in order, the Registrar shall, with the approval of the Chief Justice, fix a date for hearing the reference and shall at once cause a paper book to be prepared.

(3) The paper book shall contain the following papers:—

- (a) Police Challan;
- (b) First Information Report, if any;
- (c) Magistrate's charge with list of witnesses;
- (d) Statement under section 164 of the Code of Criminal Procedure, if any;
- (e) Examination under sections 342 and 364 of the Code of Criminal Procedure, if any;
- (f) Commitment order;
- (g) Record of evidence in the Court of Sessions with any further examination under section 364 of the Code of Criminal Procedure and the altered charge, if any ;
- (h) Judgment of the Sessions Judge;
- (i) Material documentary evidence including the post-mortem report, seizure lists and Chemical Examiner's report, if any;
- (j) Petition of appeal, if any;

- (k) Statement of witnesses recorded by the Committing Magistrate and tendered in evidence at the trial under section 288 of the Code of Criminal Procedure; and
- (l) Order Sheet and the list of exhibits.

(4) After the case is disposed of the record shall be returned by the Bench reader to the clerk concerned in the court section of the Registry who shall at once prepare a formal order in the prescribed form in accordance with the operative portion of the judgment without waiting for the judgment a copy of which shall be subsequently sent to the concerned court.

170. Appointment of Advocate at the cost of State in cases of confirmation of sentence, where the accused is unrepresented.— In any proceeding submitted to the court under section 374 of the Code of Criminal Procedure for confirmation of a sentence of death or life imprisonment if the accused is unrepresented, the Registrar shall lay the case before the Chief Justice for appointment of an Advocate for the defence of the accused at Government expense. The fee paid to the Advocate so appointed shall be fixed by the Chief Justice.

D. ACQUITTAL APPEALS UNDER SECTION 417 OF THE CODE OF CRIMINAL PROCEDURE

171. Acquittal appeals u/s 417 Cr.P.C filed upon complaints or police report.— Acquittal appeals under section 417 of the Code of Criminal Procedure comprise appeals against acquittals recorded in cases instituted upon complaints and cases registered by the Police and subsequently challaned in courts.

172. Acquittal Appeal in complaint case is not appealable with Special Leave to Appeal by the Court.— (1) An order of acquittal passed in a case instituted upon a complaint is not appealable without special leave to appeal by the Court.

(2) An application for grant of special leave to appeal shall be filed within 60 days from the date of the order of acquittal sought to be appealed against.

(3) An application for special leave to appeal against an order of acquittal shall be filed before the Registrar. It shall succinctly state the facts of the case and the grounds on which the order is sought to be set aside, and shall be accompanied by a copy of the judgment or order sought to be appealed against and in the case of an acquittal recorded in appeal a copy of the judgment of the trial court.

(4) The application shall not be made by a notice of motion. The Registrar shall list the application before a Single Bench of the court

under the directions of the Chief Justice for orders as to issue notice. If the Court is of opinion that a *prima facie* case for allowing the application is made out, the court shall grant special leave to appeal.

(5) After the special leave to appeal has been granted the appellant shall file a petition of appeal within thirty days of the order granting special leave to appeal and the Registrar shall thereafter place the petitions of appeal before the court for orders.

(6) After the case is ready it shall be placed before the Court for hearing.

173. Rule 153 to 162 contained in Part-A of this chapter shall apply to appeals u/s 417 Cr.P.C.– Rule 153 to 162 contained in Part A of this Chapter relating to Criminal Appeals shall mutatis mutandis apply to the appeals under section 417 of the Code of Criminal Procedure.

E. CUSTODY OF RECORDS IN CRIMINAL CASES

174. After the receipt of record in criminal case, receipt clerk shall examine the condition of the record and report accordingly.–

(1) Immediately on receipt of record in a criminal case by the office of the court the receipt clerk shall examine the condition of the cover and shall note on the record the date of its receipt and the condition of the cover at the time of its receipt. He shall forthwith deliver the record to the clerk concerned who shall personally examine the same and make a note stating whether the record is in order or defective and if defective the particulars in which it is defective.

(2) If on such examination it is ascertained that any paper is missing from the record or is in any manner, mutilated or that the record is in any other respect defective the clerk shall forthwith report the fact in writing to the Registrar.

175. At the conclusion of the case, record called for shall be returned to the Court concerned.– At the conclusion of any case before the court in exercise of its Criminal Jurisdiction the part of the record called for from the lower courts shall be returned with a copy of the Judgment with directions for its disposal in terms of the contents of the judgment. The remaining portion of the record shall be consigned to the criminal record room of the court.

F. PAPER BOOK

176. In every criminal appeal four copies of paper book shall be prepared.– (1) Four copies of a paper book or such number of copies as the court or the Chief Justice may direct shall be prepared in every criminal appeal in accordance with these Rules.

(2) Unless otherwise ordered every copy included in a paper book shall be type written and the paper book shall be paged, the index shall indicate the pages of all the papers included in the book.

(3) Copies to be included in the paper book of a criminal appeal or an acquittal appeal or reference under the Code of Criminal Procedure or case in which the accused has been called upon to show cause why his sentence should not be enhanced shall be those of the papers mentioned in these rules.

(4) The Chief Justice may by order direct that any copy of paper required under those rules to be included in a paper book be not so included therein.

(5) Where the bench hearing a case requires any paper not in the paper book to be copied, transliterated or translated a copy or transliteration or translation of such paper shall be included in that paper book.

(6) The Chief Justice may from time to time issue directions as to the manner in which and the conditions according to which a transliteration or translation of any paper on the record of a case may be prepared for inclusion in the paper book instead of a copy as required by these rules.

CHAPTER-XVI

AFFIDAVITS

177. Court may order that any fact may be proved on affidavits.—

(1) The 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 authorising the evidence of such witness to be given by affidavit.

(2) 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, unless the deponent is exempt from personal appearance in the court or the court otherwise directs.

178. Every affidavits filed shall be entitled "In the High of Jammu and Kashmir, Srinagar/Jammu".—(1) Every affidavit filed in the Court shall be entitled "In the High Court of Jammu and Kashmir, Srinagar/Jammu" and shall set forth the cause title of the proceeding in which the affidavit is sought to be used in evidence. An affidavit

in support of or in opposition to an interlocutory application relating to any proceeding pending in the Court shall also be entitled as made in such proceeding.

(2) Every person making an affidavit shall be described in such manner as will serve to identify him clearly that is to say by the statement of his full name, the name of his father, his age, his profession or trade and the place of his residence.

(3) An affidavit shall be drawn up in first person and confined to statements of facts and be divided into numbered paragraphs, each paragraph being confined, as nearly as may be to a distinct portion of the subject and the declarant shall sign his name at the foot of each page of the affidavit. Every affidavit shall be signed or marked and verified at the foot by the declarant. A separate verification at the foot of the affidavit shall indicate that facts stated in the affidavit are based on his personal knowledge, information or belief.

179. Affidavit shall not be used if not filed within time except leave of Court.— Where a specific time is limited for filing affidavits no affidavit filed after that time shall be used except by leave of court.

180. Affidavit having interlineations/ alterations or erasures may be refused.— The Registrar may refuse to receive an affidavit where in his opinion, the interlineations, alteration or erasures are so numerous as to make it expedient that the affidavit should be re-written.

181. Affidavit intended for use in Court may be sworn before Oath Commissioner or Magistrate or authority mentioned u/s 109 of the Code.— An affidavit intended for use in the Court may be sworn before any authority mentioned in section 109 of the code or before any officer of the court, or before the Presiding Officer of any court or before a Magistrate or a Sub-Registrar or before an Oath Commissioner, appointed under these rules.

182. All documents referred in affidavit shall be referred as Annexures.— (1) All documents referred to in the affidavits shall be referred to as Annexures and shall be marked in the same manner as exhibits and shall bear a certificate signed by the Officer before whom the affidavit is sworn in the following form namely .—

"This is the Annexure marked Exhibit A or Exhibit I (As the case may be) referred to in the affidavit of a son of B resident of..... Sworn or affirmed before me this..... day of.....19.....
Signed (CD)
Designation".

(2) When the affidavit is sworn by the appellant or applicant he annexures referred to therein shall be marked in numerical order, and when the affidavit is sworn by the respondent or non-applicant the annexures therewith shall be marked in alphabetical order.

183. The affidavit shall state day, place and authority before whom sworn.— (1) The officer or authority before whom an affidavit is made shall state the day when and the place where the same is sworn and sign his name and designation at the end in the following form .—

"Sworn (or solemnly affirmed) at on.....
this..... day of199..... before me
by..... whom is identified by or who is
personally known to me.

Signed (CD)
Designation.

Signature or the Thumb

Signature or the Thumb

Impression of the Deponent.

Impression of the Identifying

Witness."

(2) Where the deponent is a *Parda Nashin* Lady, she shall be identified by a person to whom she is known and that person shall prove the identification by a separate affidavit.

(3) The deponent, if not personally known to the officer or person before whom the affidavit is sworn, shall be identified by some person known to the officer or person, and the officer or person shall specify at the foot of the affidavit the name and description of the person identifying the declarant.

(4) If the declarant is not known to the officer or person before whom the affidavit is made and cannot be identified as in sub-rule (3) above the impression of the thumb of the declarant's left hand shall be taken at the foot of the last page of the affidavit and the following certificates shall be added to item namely.—

"Certified that this is the impression of the thumb of the
left hand of the declarant of the above affidavit."

Designation

(5) If the declarant is ignorant of the language in which the affidavit is written or appears to be illiterate or blind the officer or person before whom it is made shall cause the affidavit to be read out and explained to the person in his presence in the language which the declarant understands. When the affidavit has been explained to the declarant and admitted by him to be correct he shall be sworn or affirmed in the usual manner and the following certificate shall be

recorded at the foot of the affidavit by the person before whom it is sworn or affirmed.—

"Sworn (or solemnly affirmed) at on
this..... day of 19.... before me. The
contents of this affidavit and the exhibits if any referred to
therein have been first truly audibly read over to the declarant
in....., he being acquainted with..... (Or being
blind) who appeared perfectly to understand the same and
made his mark thereto (or signed his name) in my presence.

Signature or the Thumb Signature (AB)

Impression of the Deponent. Designation."

(6) All alterations, erasures and interlineations, if any, shall, before the affidavit is sworn and affirmed, be authenticated by the initials of the officer or person before whom the affidavit is sworn and no affidavit having an alterations, erasures or interlineations not so authenticated shall except with the leave of the court, be filed or made use of in any manner.

184. Evidence may be given on affidavits as provided by Order XIX Rule 2 of CPC and not otherwise unless ordered by the Court.—
When upon any application any evidence is to be given such evidence shall ordinarily be given by affidavit as provided by Order XIX Rule 2 of the code and not otherwise unless ordered by the court.

185. Facts asserted by the party shall be supported by the affidavit.— Facts asserted by a party showing cause against any appeal, application or petition supported by affidavit shall like-wise be supported by affidavit, whether the facts asserted be in contradiction of the facts asserted in support of the same or be fresh matter. Such affidavit may be presented before the date fixed for the hearing of the appeal, application or petition.

CHAPTER-XVII

OATH COMMISSIONERS

186. Appointments of oath Commissioners.— The Chief Justice shall appoint Oath Commissioner for the purpose of administering Oaths and affirmations under clause (b) of section 139 of the Code of Civil Procedure or under any other provision of law providing for such appointment, at the Headquarters of each District, Sub-Division and a Tehsil. The Oath Commissioners appointed under this Rule shall have the authority to attest affidavits in accordance with the Rules prescribed or the Instructions issued in this behalf.

187. Qualification of Oath Commissioner.— No person shall be qualified for appointment as an Oath Commissioner unless:—

- (a) He has for at least one year but not exceeding five years been an Advocate of the High Court;
- (b) He is below the age of 35 years.

Provided that the Chief Justice may relax the qualification bar in case of physically handicapped and invalid Advocate or Legal Practitioners.

188. Application for appointment as Oath Commissioner be submitted to High Court through District Judge/Bar Association.—(1) The eligible Advocates shall submit their applications for appointments as Oath Commissioner within District to the District Judge of the District and for High Court premises to the President of the Bar Association where they practice. Such application shall be forwarded to the High Court with comments about the suitability of the candidate for appointment as an Oath Commissioner.

(2) Applications for appointment as Oath Commissioner shall be filed in the following form:—

Application Form

1. Name
2. Parentage
3. Date of birth
4. Address
5. Date of enrolment as an Advocate or the date of issue of Legal Practitioners Licence
6. Place of practice
7. Area for which application is made
8. Date of earlier appointment as Oath Commissioner and the period of such appointment
9. Declaration by the applicant

I hereby declare that I shall be bound by the rules pertaining to the appointment of the Oath Commissioners and shall have no objection if my licence is cancelled for non-compliance of any of the rules, notifications or direction issued. I shall properly maintain the register and accounts and shall regularly submit the same for inspection to the authority concerned.

Signature of the applicant

10. Recommendations of the District Judge/Bar Association.

189. Term of Oath Commissioner.—(1) The Oath Commissioner appointed under rule 186 shall hold office for the term of two years from the date of his appointment provided the Chief Justice may curtail the term if he thinks proper to do so and may remove him in his discretion at any time without assigning any cause.

(2) All the Oath Commissioners shall confine their attestation work to the places specified in the notification of their appointment and to the attestation of affidavits meant to be filed in Courts for which they are appointed.

(3) Non-compliance of any of the rules, notifications or directions issued shall result in the termination of the appointment of defaulting Oath Commissioner without any notice to him and the fact of the termination of his appointment as Oath Commissioner shall be notified by the Registrar of the Court on the Notice Board of the High Court and that of the District and Sessions Court and a copy thereof shall be endorsed to the Secretary of the concerned Bar Association.

190. Remuneration to be charged by the Oath Commissioner.-
Oath Commissioner shall charge remuneration of Rs. 6/- for each affidavit and shall keep a register in the form prescribed by the Court in which all affidavits shall be entered. A written receipt for the amount paid shall be given by the Oath Commissioner to the deponent. A receipt shall be in a printed form consisting of foil and counterfoil, the foil being handed over to the person paying the money and the counterfoil being kept by the Oath Commissioner for the purpose of inspection. The Oath Commissioner will be entitled to an additional fee of Rs 10/- from a deponent when he is required to attend the deponent's residence. The above charges will be in addition to any stamp duty payable on the affidavits under the Stamps Act. (Each Oath Commissioner shall submit his registers for verification of the District Judge at least once in six months and obtain certificate from him on the register and receipt books containing counterfoils.)

191. Identity of deponent shall be ascertained before attestation.- (1) The Oath Commissioner shall ascertain the identity of the deponent before attestation and shall append on it a certificate to that effect. Full particulars of the deponent, such as, name, parentage, occupation and address shall clearly be noted in the said certificate of the Oath Commissioner. If the person affirming is an illiterate or is not conversant with the language in which the affidavit is written, the Oath Commissioner shall before attesting the same translate and interpret the contents of the affidavit in the language known to the deponent and shall certify the fact of his having done so while attesting the affidavit. Every exhibit annexed to an affidavit shall be marked and initialed and dated by the Oath Commissioner before it is sworn to or affirmed. Where an affidavit runs into more

than one page, each page shall bear the seal and initials of the Oath Commissioner.

(2) The Oath Commissioner attesting an affidavit shall specifically indicate his name in block letters below his signatures or affix the rubber stamp thereon containing his full name.

(3) The serial number of the entry made in his register shall be put on every affidavit.

(4) The registers and the counterfoils of the receipt books shall be deposited by every Oath Commissioner after the expiry of his term with the District and Sessions Judge or the High Court, as the case may be.

192. Maintenance of Register by Oath Commissioner.— (1) Oath Commissioner shall maintain a register or registers which contain the following particulars with respects to each affidavit sworn before him, namely.—

- (a) Serial Number;
- (b) Date and time of making affidavit;
- (c) Particulars of the case to which affidavit relates ;
- (d) Full particulars of person making the affidavit;
- (e) Particulars of the person identifying him;
- (f) Fee paid;
- (g) Signature of the deponent;
- (h) Signature of the identifier; and
- (i) Signature of the Oath Commissioner and remarks, if any.

(2) The High Court may from time to time fix the number of registers to be maintained and add to or alter the particulars required to be entered therein.

(3) The registers maintained under this rule shall be open to inspection by a Judge of the Court, the Registrar and District Judge of the District where the Oath Commissioner carries on his ordinary business.

193. Serial No. and year of Register be entered on each Affidavit.— The Oath Commissioner shall record on each affidavit the serial number and the year of the register in which it is entered.

194. No affidavit will be allowed to be sworn unless it complies with the provisions of this chapter.— An Oath Commissioner shall not allow an affidavit to be sworn before himself unless it fully complies with the provisions in this Chapter and preceding chapters.

195. Deposit of register along with counterfoils of receipt books in the High Court after the expiry of term.— All Oath Commissioners shall deposit their registers and counterfoils of the receipt books as

maintained by them under rule 110 and 112 respectively with the Registrar, High Court after expiry of the term of their appointment.

CHAPTER-XVIII COSTS

196. Pleadings - meaning of.- In this Chapter, 'Pleadings' shall include Memorandum of Appeal, Cross-objection, Original Petition, Application, Counter Statement, Reply, Rejoinder and every statement setting out the case of a party.

197. Where judgment as to cost is silent, it is deemed that parties will bear their costs.- If in any judgment or order of the High Court there is no direction regarding costs, it shall be deemed that the Court has directed the parties to bear their own costs. In such cases and in the cases in which the Court directs the parties to bear their own costs, it shall not be necessary to append to the decree or order a Memorandum of Costs.

198. Costs unless Court otherwise directs, be calculated according to rules.- Costs shall, unless the Court otherwise directs, be calculated according to the rules contained in this chapter and there shall be a memorandum appended to the decree or order setting out the particulars of the costs and indicating the party by whom and the party to whom the same should be paid.

199. Taxation of Costs.- In all Civil Cases costs awarded to a party include –

- (i) Court-fee paid on –
 - (a) the pleadings of the party;
 - (b) the documents (including certified copies) required to be produced with the pleadings and produced by him;
 - (c) the vakalathnamas filed by him;
 - (d) the processes issued on his behalf or at his instance; and
 - (e) the documents (including certified copies) subsequently filed by him and exhibited in the case.

(ii) Expenses paid to witnesses summoned on his behalf, if any, who have appeared and given evidence;

(iii) Cost incurred in obtaining certified copies of judgment and decree or order appealed from or against which the revision is preferred as the case may be;

(iv) Costs incurred in interlocutory matters which are made costs in the cause;

(v) Expenses and charges paid or incurred by a party in respect of the paper book of a case excluding the cost of additional copies purchased by him; and

(vi) Fee actually paid by him to his Advocate or Advocates not exceeding the amount calculated according to the next succeeding rule.

Provided that such fee shall not be included in the costs, if he has not filed within 8 days of the date of judgment or order or such further period as may be allowed by the Court, a certificate by the Advocate or Advocates, as the case may be certifying that the fee has been received by him or them;

Provided, further that in the case of a pleader appearing for the Government or other public body or an authority or any Corporation, a certificate by him that he is assured of the receipt of such fee shall be sufficient.

200. Costs includes fee of Advocate.— Advocate fee to be included in the costs awarded to party in any Civil Appeal or other Civil Proceedings in the High Court shall be computed in the manner prescribed in these rules;

(i) In Regular First Appeals and in Regular Second Appeals the fee shall, subject to a minimum of Rs. 100/- in Regular First Appeals and Rs. 50/- in Regular Second Appeals, be calculated on the value of the subject matter in dispute in the appeal, according to the following scale:—

On the first sum of Rs. 5,000 at 5 per cent.

On the next sum of Rs. 10,000 at 3 per cent.

On the next sum of Rs. 10,000 at 2 per cent.

On the next sum of Rs. 20,000 at 1 per cent.

(ii) In Execution Appeals, the fee payable shall be one third of the fee which would have been payable, if the appeal had been a regular appeal, subject to a minimum of Rs. 50/- in First Appeals and Rs. 25/- in Second Appeals.

(iii) In Revision Petitions against decrees of Courts of Small Causes, the fee shall be 3 percent of the amount in dispute in the revision petition subject to a minimum of Rs. 25/-.

(iv) In appeals against interlocutory orders the fee shall be Rs. 50/- and in Revision Petitions against interlocutory order Rs. 25/-.

201. Court fee in civil suits heard by High Court in its civil jurisdiction. In civil suits heard by the High Court in its original civil jurisdiction the fee shall be as under.—

1. In suits for recovery of specific property, or a share of specific property, whether movable or immovable or for the breach of any contract or for damages.—

- (a) if the amount or value of the property, debt or damages decrees shall not exceed rupees five thousand according to the valuation for purposes of appeal to the Court, the fee shall be calculated at seven and an half per cent (7.5 %) on the amount or value decreed, but the Court, may, in any case, otherwise order and fix such percentage as shall appear to be just and equitable;
- (b) if the amount or value decreed shall exceed rupees five thousand, the fee payable shall be calculated at such a percentage as shall appear to the Court to be just and equitable.

2. In suit for injuries to the person or character of the plaintiff, such as suits for assault or defamation or for injuries to property or to enforce right where the pecuniary value of such injury or right can not be exactly defined as in suits for interference with a right or light or water, or to enforce a right of pre-emption, or suits for the partition of joint property, where partition is improperly resisted, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference whether to the amount decreed or according to the valuation of the suit or according to such sum not exceeding the valuation, as the Court shall think reasonable and shall fix with reference to the importance of the subject matter in dispute. In any such case, the amount of the fee shall be calculated according to sub-rule 1.

3. If the suit be dismissed for default or upon the merits, the fee allowed to the defendant shall be calculated according to sub-rule 1 on the whole value of the suit.

4. If the suit shall be decreed for the plaintiff as to part only of the claim, and as to the remainder shall be dismissed, the fee allowed to each party should be fixed with reference to the value of that part of the claim in respect of which he shall succeed, and shall be calculated according to sub-rule 1.

5. If any suit for damages, the plaintiff succeeds as to the whole of his cause of action, but fails to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance for counsel in respect of the difference between the amount of damages claimed and the amount recovered, unless the Court shall be of opinion that the amount claimed for damages was

unreasonable or excessive and shall, for that or any other cause, direct that a fee be allowed to the defendant.

If specially allowed, the amount of such fee shall be fixed with reference to the amount of damages disallowed to the plaintiff and shall be calculated according to sub-rule 1.

6. If several defendants who have a joint or common interest succeed upon a joint defence or upon separate defences substantially the same, not more than one fee shall be allowed, unless the Court shall otherwise order. If only one fee be allowed, the Court shall direct to which of the defendants it shall be paid or shall apportion it among the several defendants in such manner as the Court shall think fit.

7. If several defendants, who have separate interest, set up separate and distinct defences and succeed thereon, a fee for each of the defendants who shall appear by separate counsel may be allowed in respect of his separate interest. Such fee if allowed, shall be calculated, with reference to the value of the separate interest of such defendants, according to sub-rule 1.

8. In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall be fixed by the Court with reference to the nature and importance of the proceeding or matter. Provided that in no case shall the amount allowed in respect of such fee exceed rupees seven hundred and fifty.

9. If a suit in the High Court as a Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum fixed for a defended suit of the same nature and value.

10. If a review be rejected after summoning the opposite party or if, after the admission of a review the former judgment be upheld, the fee, if allowed to the successful party in the review, shall be fixed by the Court at an amount which shall be fixed by the Court at an amount which shall not in any case exceed one-half of the amount allowed by these rules in case of an original decree.

11. If, after the admission of a review, the former judgment be revised, the fee in respect of the review, if allowed to the party who succeeds in the review, shall not exceed one-half the amount allowed by these rules in case of an original decree. The fee allowed in respect of the review will be irrespective of any fee which may be included in any costs in respect of the original suit which may be adjudged to the successful party by the judgment in review, unless the Court shall otherwise order.

12. When the interest of several appellants is joint, not more than one fee shall be allowed, unless the Court shall otherwise order. If one fee only be allowed, the Court shall direct to which of the appellants it shall be paid or shall apportion it amongst the several appellants in such proportion as it shall think fit.

13. If several respondents in one appeal appear by separate counsel in determining whether separate fees shall be allowed, the Court shall be guided by the principles laid down in sub-rule 6 and 7.

14. If, in any instance, the payment of fees according to the preceding rules shall not appear to the Court to be just and equitable the Court may exercise its discretion in allowing such fee as may appear just and equitable.

15. Notwithstanding anything contained in the rules of the Court and notwithstanding any order of a Judge or Judges, no fee for the appearance of any Advocate, shall, except as in these rules hereinafter provided be allowed on taxation between party and party, or shall be included in any decree or order unless the Taxation Officer is satisfied that the fee was paid to the Advocate, before the hearing and unless the party claiming to have such fee allowed shall, before the hearing file in the office of the Taxation Officer, a certificate signed by the Advocate, certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other Advocates, in whose place he may have appeared.

16. The certificate mentioned in rule 16 shall, so far possible, be in the following form:-

IN THE HIGH COURT OF JAMMU AND KASHMIR

AT.....

Between and

For the purpose of presentation to the Taxing Officer having my fee allowed on taxation as against the party or parties who may be liable for costs under the judgment or order of the Court, I, in accordance with rules regulating the fees of counsel in the Court, hereby certify that in the above....., the following fees were paid to me as my exclusive fee was associated (or as my fee as well as that of..... who with me in the case) on the dates and by the person or persons specified below, and that no portion of such fees have been returned and that no agreement for such return or remission has been made by me or by any one on my behalf or on

behalf of who was associated with me were in the case

Matter	Fee	Date of Payment	By whom paid	Address of person who actually made such payment

Signature.....

Date of Signature.....

Address of Advocate.....

Filed on the day of by.....

(vi) In other proceedings the fee shall be such as may be filed by the Court, regard being had to the time occupied in the preparation and hearing of the case and the nature of the question raised therein, but subject to the *minima* and *maxima* prescribed hereunder.-

Nature of proceedings, whether Original appellate or revisional	Minimum Rs.	Maximum Rs.
(a) Matrimonial Cases	50/-	200/-
(b) Guardian and Ward Cases	50/-	200/-
(c) Election Cases	100/-	1000/-
(d) Tax Matters	100/-	1000/-
(e) Land Acquisition Cases	100/-	1000/-
(f) Probate or succession matters if uncontested	50/-	250/-
Probate or succession matters if contested	100/-	1000/-
(g) Insolvency Cases	100/-	1000/-
(h) Arbitration Cases	—	1000/-
(i) Other Miscellaneous Matters	50/-	250/-
(j) Interlocutory Matters	25/-	50/-

If, in any case coming under this sub-rule, the Court orders without fixing the same, the Court shall be deemed to have awarded the minimum prescribed.

(vii) If in any case before the High Court, the Court while awarding costs, certified for two Advocates, the costs, shall include one Advocate's fee calculated according to this rule and 1/3rd thereof as fee for the second Advocate.

(viii) If several respondents who have joint or common interest succeed upon a joint defence or upon a separate defence substantially the same, not more than one fee shall be allowed, the Court may direct to which of the respondents it shall be paid and in what proportion. In the absence of such a direction, it shall be apportioned equally between the several respondents.

(ix) If several respondents who have separate interests set up separate and distinct defences and succeed thereon, one fee, for each of such respondents appearing by a separate Advocate, may be allowed in respect of his separate interests. Such fee, if allowed shall be calculated on the value of the separate interest of such respondents in the manner hereinbefore prescribed.

(x) Fractions of a rupee in the amount of value of the claim shall be ignored in calculating the fee payable thereon.

202. Costs in Writ Petitions/matters under Article 227-228 of Constitution shall be with the discretion of Court.— In Writ Petitions and matters under Articles 227 and 228 of the Constitution, costs shall be exclusively within the discretion of the Court and when the Court makes no direction regarding cost the same shall be deemed to have been refused.

203. Nothing in this chapter shall apply to Company matters.— Nothing in this chapter shall apply to Company matter.

CHAPTER-XIX

EXECUTIVE AND ADMINISTRATIVE BUSINESS OF THE COURT

204. Appointment of Judge(s) in Administrative department.—

(1) Chief Justice may from time to time appoint one or more judges of the Court to be the Judge in the Administrative Department and assign him any work of administrative nature.

205. Matters to be disposed in Judge's meeting.— The following matters shall disposed of at a Judge's meeting.—

- (a) Draft of rules proposed to be made Rules of the Court;
- (b) Suggested additions to or alterations in Rules of the Court;
- (c) Rules affecting costs or charges payable by parties;
- (d) Questions affecting the constitution of the Court;
- (e) Subjects connected with the relations between the Supreme Court and the High Court;
- (f) All administrative matters upon which the Government desires the opinion of the Court;
- (g) All appointments, postings and promotions which by law are made by the Court and which are not otherwise expressly provided for these rules;

- (h) All recommendations for the dismissal or suspension from office of Judicial Officers or for taking any administrative action against any one of such Officers;
- (i) Any other matter which a Judge requests in writing to be placed in a Judges' Meeting.

206. Fixing of Judge's meeting.— (1) A Judges' Meeting shall be held on such date as is fixed by the Registrar on the verbal orders of the Chief Justice.

(2) The quorum in a meeting convened under sub-rule (i) above shall be three Judges. The disposal of all the business in such meeting shall be deemed to be disposal by the Full Court.

(3) The Registrar or in his absence any officer of the Registry ordered by the Chief Justice shall attend the Judges' Meeting and shall record in the Minute Book the proceedings of such meeting.

(4) In case of a difference of opinion at a Judges' Meeting the decision shall be in accordance with the opinion of the majority of the judges present and in case the judges present be equally divided the decision shall be in accordance with the opinion of the Chief Justice or in his absence the senior Judge present.

(5) The Minute Book of the Court shall be kept in safe of the Court and shall not be removed from the Court premises except by the Registrar with the permission of the Chief Justice for any purpose mentioned in these rules.

(6) Besides the Minute Book a Court Decision Register may be maintained by the Chief Justice wherein important decisions taken at Judges' Meeting may be briefly recorded. This register shall remain in the custody of the Chief Justice.

(7) A copy of the agenda drawn up for the Judges' Meeting shall be supplied by the Registrar to the Judges before the proposed Judges' Meeting.

(8) The proceedings of the Judges' Meeting as recorded by the Registrar in the Minute Book or by the Chief Justice in the Court Decision Register shall be open to inspection when called for by any of the Judges.

(9) Any individual judge shall be at liberty to record a separate minute upon any matter that comes up for discussion in a Judges' Meeting but no such minute shall be communicated to any authority by the Registrar.

(10) No irregularity in, or omission to follow, the procedure prescribed in this rule shall affect the validity of any order passed or anything done under these rules.

207. Delegations of powers by the Court to Chief Justice.— The Court has delegated the following administrative functions in this rule exercisable by it to the Chief Justice, and any orders passed or action taken in respect of these matters by the Chief Justice shall be deemed to be the action and orders of the Court;

- (a) Grant of privilege, casual or station leaves for all Judicial Officers;
- (b) Permission to a Judicial Officer to hold spot trial;
- (c) Permission to a Judicial Officer to appear as a witness;
- (d) Allowing or disallowing joining time or and Advance TA to Judicial Officers on their transfer;
- (e) Conferment of Magisterial Powers Judicial and powers to try offences summarily on Judicial Officers;
- (f) Investment pecuniary jurisdiction on Judicial Officers; and
- (g) Delimitation of the territorial jurisdiction of Courts;
- (h) To transfer a Munsiff.

CHAPTER-XX INSPECTION OF RECORD

208. No record shall be removed from the Court without permission.— No record of any case shall be removed from Court building except under an order in writing of the Chief Justice or a Judge or the Registrar.

Provided, that if the Chief Justice or a Judge requires any record at his residence, he may take it. The official, who has the custody of the record shall keep a note of the date when the Chief Justice or the Judge takes the record and the date when he returns the same.

209. Inspection of record.— No record or paper in the Administrative Section of the Court shall be inspected by any person other than the Chief Justice or a Judge. A Gazetted Officer of the Court may, however, inspect such record with the permission in writing of the Registrar.

210. Authorities competent to inspect record.— The inspection of the records of decided cases will be allowed only under the orders of the Chief Justice or in his absence the next Senior Judge.

211. Inspection of record of decided cases.— Record of pending cases will open, as of right to the inspection by the parties on their authorised agents or any Advocate or Vakil of the Court who is duly authorised to act in theca.

Provided that the inspection of record not be permitted on the date fixed for hearing without any order of the Bench before which the case is fixed.

212. Inspection of Stranger.— A person other than a party to a case may, with the express permission of the Registrar, inspect the record of a pending case. The Registrar shall in such cases ascertain the reason why such inspection is desired; and such inspection shall be made in presence of the Registrar or the Assistant Registrar.

213. Access to record of pending cases.— Access to the record of a pending case shall be allowed subject to the rule herein contained.

214. Application for inspection of record shall be made duty stamped.— An application for the inspection of record shall be made by a petition duly stamped with a court fee of Rs. 2/- in ordinary cases and by a petition stamped with a court fee of Rs. 5/- in case the inspection is desired on the date of hearing of the case.

215. Government Advocates are exempted for payment of Court fee for inspection of record in civil/criminal.— No fees for the inspection of record under these rules shall be charged from any authority or counsel appearing in civil or criminal cases on behalf of the Government or from a counsel appearing for an accused or an appellant in cases where the latter is a pauper or is defended by a counsel provided by the Government.

216. Particulars be specified in the application.— Every application for inspection shall specify clearly.—

- (a) the particulars of the record or paper of which inspection is desired;
- (b) the party of the person on whose behalf the application is made;
- (c) the name of the person by whom inspection is to be made;
- (d) whether the application is an ordinary or urgent one; and
- (e) any other particulars necessary to be incorporated.

217. Time of Inspection.— (a) Any person permitted to inspect record may inspect it between the hours 10.30 a.m. and 4.30 p.m. on such day or days for which permission is given.

(b) When urgent inspection is desired on the date of hearing it shall be permitted between 10:00 a.m. and 11:00 a.m.

218. Place of Inspection.— Record will be inspected only in the room set apart for the purpose between the hours mentioned in rule 217 and, in the presence of a responsible officer of the Court. It will be the duty of the officer to supervise all inspections and to see that rule relating thereto are duly observed. It will not be his duty to assist any person, by reading or otherwise in the inspection of record and he is strictly prohibited from doing so.

219. No mark shall be made on any record at the time of inspection.— No mark shall be made on any record or paper inspected and no servant or any member of the Bar shall be allowed on any account, to take notes for his master except in the presence of his master. Pen or ink shall not be used by any person inspecting the record.

220. Application shall be presented before Registrar between 10.30 a.m to 4 p.m.— Every application for inspection of record shall be made before the Registrar on a working day between 10:30 a.m. to 4:00 p.m.

221. Permission to inspect should specify record.— Every order allowing inspection of record shall specify the record or the paper or papers of which inspection is permitted and shall state the name of the person or persons who may make such inspection.

222. The fee provided shall entitle inspection for one day only.— The fee provided in Rule 214 above shall entitle the applicant to inspect that record on one day only and if inspection of the record is desired on any other day a fresh application with fresh fee shall be required.

223. Priority in disposal of application.— Applications bearing court-fee stamp of Rs. 5/- shall receive priority in disposal; other applications shall be dealt with in the ordinary course of business.

224. Police papers received in Court with any pending case shall not be open to inspection.— Police papers received in the court in connection with any pending criminal case and translation of such papers shall not be available for inspection either by the convict or the accused or by his agent or by any legal practitioner retained on his behalf.

CHAPTER-XXI

COPIES

225. Entitlement to copies of judicial record.— Copies of Judicial Record may be issued in accordance with these rules to any person, who is legally entitled to obtain the same.

226. Plaintiff /defendant can get copy of suit/appeal record on payment of fee.— A plaintiff or defendant may at any stage of the suit or appeal obtain a copy of the record of the suit or appeal, including exhibits, which have been put in and finally accepted by the Court as evidence on payment of fee prescribed by these rules.

227. A stranger to the suit or appeal may get copy on payment of fee.— (i) A stranger to the suit or appeal may, after decree, obtain on payment of fees prescribed by the these rules, copies of

the plaint, memorandum of appeal, written statement, affidavits and petitions filed in the suit or appeal and may for sufficient reason shown to the satisfaction of the Registrar, obtain copies of any such document before decree. He may also obtain, on payment of prescribed fees, a copy of any judgment, decree, or order at any time after it has been passed or made.

(ii) A stranger to the suit or appeal has no right to obtain copies of exhibit put in evidence except with the consent of the person by whom they were produced.

228. Translated copy of Judicial record.— Any person entitled to obtain a copy of a Judicial Record may apply for a translation thereof and he will be charged for the translation furnished to him a fee equal to double fee chargeable for a copy thereof.

229. State is entitled to obtain copy of judgment of decree or order free of cost, where State is a party.— In all cases where the State is a party, it shall be entitled to receive a copy of the judgment or order or decree free of cost on an application made in this behalf by the counsel appearing for the State or any other person duly authorised by the State.

230. State is entitled to obtain copy of judgment of decree or order free of cost, where State is a party.— No copy shall be given of any document which is itself a copy except for special reasons to be recorded, on the application by the Registrar, where a copy of a copy is given, the fact that it is such copy shall be noted in red ink on the top of each page of such copy.

231. No copy/extract of file Shall be issued.— No copy of, or extract from any minute, letter or document on any administrative or confidential file of the Court shall be issued except under an order in writing of the Chief Justice.

232. Copy of judgment or order in criminal case shall be given free of cost to the Prisoner in Jail.— A copy of the Judgment or order in a criminal case, may be supplied free of charge to a prisoner confined in a jail on the application received through the officer-in-charge of the jail concerned.

233. Issuance of copies of judgments to Law Reporters/Journals on approved rates.— (i) The copies of the judgment may be supplied to such Law Reporter/Journals on such rates as may be approved and fixed by the Chief Justice from time to time.

(ii) No copy of any judgment shall be issued under this rule unless the Judge or Judges delivering judgment have previously approved the same for reporting.

(iii) The Chief Justice may, at any time, withdraw or modify without assigning any reason, the privilege or concession granted under this rule.

234. In case of Maps/Plans charges will be fixed by the Registrar.— In the case of maps and plans, the charge shall be fixed by the Registrar. Regard being had to the difficulty and intricacy of the work to be done.

235. Charge of extra fee on requisition of copy urgently.— When the applicant requires his copy to be furnished urgently, an extra fee shall be charged, which shall be equal in amount to the copying fee.

236. Copies of any record may be issued to the Head of the Department/Government of India etc, free of cost subject to approval of Chief Justice.— Notwithstanding anything contained in these rules, the Registrar may, with the previous approval of the Chief Justice, order a copy of any paper or record to be made and delivered free of charge upon an application on behalf of the Government of India or the Head of any Department of Government of India or any High Court in India or any authority in India exercising jurisdiction similar to that of a High Court, or any Court Subordinate to this Court, or any Principal Court in other country.

237. Application shall be presented in person or by post.— Every application for grant of a copy shall be presented in person, or sent by post to the Registrar.

238. Particular mentioned in the application for translated copy.— An application for a copy or translation shall contain the following particulars, namely:—

- (a) the name of the cause ;
- (b) if the cause is pending, the date of institution there of and the date fixed for hearing, if any;
- (c) if the cause has been decided, the date of decision;
- (d) where the information referred to in clauses (b), (c) is not available to the applicant such other information as may be sufficient to enable the cause to be identified and traced;
- (e) the nature of the document, a copy translation of which is required;
- (f) the purpose for which the copy or translation is sought;
- (g) the name and full postal address of the applicant.

239. Action of receipt of application by post.— Upon the presentation or receipt by post of an application for a copy of

translation, the Superintendent Copying Section shall proceed as under:-

- (a) Endorse or cause to be endorsed thereon the date of presentation;
- (b) initial the endorsement;
- (c) cause the application to be registered under these rules;

240. Rejection of application if found defective and the same are not removed within one week.— If an application for copy does not contain sufficient information to enable the record to be traced or if the fee paid is insufficient or the application is otherwise defective, the applicant shall be asked to do the needful and if the application has been received by the post, the information shall be communicated to the applicant by unpaid post. If the defect is not removed or the deficiency not paid within one week, the application shall be rejected. The endorsement to that effect shall be made on the application which shall be returned to the applicant.

241. Every copy/translated copy must bear signatures of copiest.— Every copy or translation must bear the signature of the copyist making it and the date on which the copy of the translation was completed. It must also bear the signature of the clerk, who examined the copy of the translation and the date on which such copy or translation was examined.

***242. Deleted.**

*[Deleted vide Notification No. 01 dated: 01-04-2000.]

243. Destruction of copy if application failed to turn up within two months.— Should the applicant, in any case, fail to appear to claim the copy or the translation within two months from the date on which he was due to receive the same, such copy of translation shall be destroyed.

244. In case of refusal the stamps shall be returned.— In any case in which a copy is refused, or cannot be granted, the stamps supplied by the applicant shall be returned to him.

245. Certified copy shall be issued by Authorised Officer u/s 76 Evidence Act.— A certified copy shall bear the seal of the Court and shall be certified to be true copy and be signed in full by an officer authorised to do so by the Registrar. The Certifying Officer shall append to his signature the words "authorised under section 76 of the Evidence Act".

***246. Particulars to be recorded on the last page of the copy.**— (i) On the last sheet of every copy granted under these rules, the following particulars shall be carefully recorded.—

- (a) date of application for the copy;
- (b) date on which the copy was ready for delivery;
- (c) date of making over the copy to the applicant;
- (d) fee charged including extra fee for urgency.

*[Rule 246 recasted vide Notification No. 1 of 2000 Dated: 01-04-2000]

247. Consolidated Copy fee for Judgment /Order.— (1) For every copy of judgment, or order there will be charged a consolidated copying fee of Rs. 10/- (if the judgment, or order is upto 10 pages) and Rs 20/- (if the judgment, or order is more than 10 pages).

For certified copies of a decree, whether in english or vernacular and without regard to the number of words, the charges shall be Rs. 2/-.

For urgent copies the fee shall be double the said amounts.

Application for such copies shall be accompanied by stamps of the requisite denomination.

Provided that in case the applicant does not know the exact number of pages of the judgment, or order, he may pay stamps duty worth Rs. 10/-. In case the pages appear to be more than 10, the remaining stamps will be collected at the time of delivery of the copy.

(2) An ordinary copy shall ordinarily be supplied within seven working days from the date application is made in this behalf.

An urgent copy shall ordinarily be supplied within 48 hours from the said date.

(3) An application for a certified copies shall be received by the Registry against a proper receipt showing the date of filing of the application and the date when the copy shall be ready for delivery.

CHAPTER-XXII

APPEALS TO THE SUPREME COURT

A. APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT

(a) Cases other than Criminal Cases.

(b) Criminal cases.

248. Petition for leave to appeal.— (1) A petition for leave to Appeal to the Supreme Court shall be entitled.—

IN THE HIGH COURT OF JAMMU AND KASHMIR

Petition for leave to Appeal for the Supreme Court of India

Under articleof the
Constitution from Judgment/Order/Decree passed by the High Court
of Jammu and Kashmir in Case No.....of.....
entitled.....S/o.....

Versus.....S/o.....

R/o.....

(Opposite Party)

PETITIONER

(2) The petition shall contain a brief statement of the case and the grounds of appeal. It shall be supported by an affidavit and accompanied by a certified copy of the judgment, decree or order sought to be appealed against as the case may be, as also two spare copies thereof.

249. Limitation.- (1) Subject to the provisions of any law for time being in force, Article 179 of the First Schedule of the Limitation Act, 1995, shall apply to a petition for a certificate under Article 132(1) or Article 133 (1) of the Constitution of India and provisions of sections 4, 5 and 12 of the Limitation Act shall apply to such petition.

250. Examination of petition for leave to appeal.- Every application for leave to appeal to the Supreme Court shall be presented to the Registrar who shall before placing it before the Court, cause it to be registered and examined whether it is in time, sufficiently stamped and completes with the provisions of these rules.

251. Placement of petition before the Bench which heard the case.- A petition for leave to appeal to the Supreme Court shall be placed before the Bench which heard and passed the judgment, decree or order sough to be appealed from unless any of the Judge constituting the Bench has ceased to hold office or is not otherwise readily available in which case it shall be placed before such other Bench as may be constituted by the Chief Justice.

252. Service of notice to Advocate shall be deemed service on the party.- In all cases where a party has appeared through an Advocate, service of notice on such Advocate shall be deemed to be sufficient service on the party.

(b) Criminal Cases.-

253. Prayer for Certificate under Article 132 (1) or 134(1) (c) of Constitution of India.- (1) A prayers for a certificate under Article 132 (1) or 134(1) (c) of the Constitution of India in a criminal proceeding may be made orally to the Court at the time when the judgment, final order or sentence is passed. The Court shall thereupon record an order granting or refusing to grant such certificates. Where no such oral prayer is made an application in writing for such certificate may be made within thirty days from the date of such judgment, final order or sentence and no application made beyond that period shall be entertained unless the Court, for sufficient cause, extends the time.

(2) The petition shall state sufficiently and clearly as may be necessary to be stated in order to enable the court to determine whether such certificate ought to be granted and shall be signed by the applicant or his Advocate.

(3) If the Court does not find sufficient reasons to admit the application it shall reject it. Where the application is not so rejected it shall be heard after notice thereof has been given to the counsel for the Government, to the Respondent.

254. Undertaking to lodge an appeal.— (1) On the applicant executing a bond with or without sureties undertaking to lodge an appeal in the Supreme Court within the prescribed time, the Court may :

- (i) order that the execution of the sentence or order to be suspended; or
- (ii) where the applicant is in confinement, admit him to bail on such terms as the Court may think fit pending the disposal of the application or where the requisite certificate is granted pending the lodging of an appeal in the Supreme Court.

Provided that where the application is by the Government no such bond shall be required before an order under this rule is made.

(2) The provisions of rules 170 and 171 shall apply *mutatis mutandis* to a petition for a certificate in a criminal proceeding also.

B. PREPARATION OF RECORD

255. Application of Supreme Court Rules, 1966 for preparation of record under the supervision of the Registrar of the High Court.— Where the record of the case is directed to be prepared under the supervision of the Registrar of the High Court, the provisions contained in Rules 15 to 25 of Order XV (Civil Appeals) and Rules 17-22 of Order XXI, (Criminal Appeals) Part II of the Supreme Court Rules, 1966 shall apply *mutatis mutandis* to the preparation thereof.

CHAPTER-XXIII

Rules framed under the Jammu and Kashmir Press and Publication Act, 1989 (1932 AD)

256. Application u/s 21 of the Act to set-aside the order of forfeiture.— (i) An application to the Court under Section 21 of the Jammu and Kashmir Press and Publication Act to set-aside an order of forfeiture shall be made by the presentation of a petition signed by the applicant and supported by an affidavit.

(ii) The petition shall bear the general head "In the High Court of Jammu and Kashmir" and shall be entitled "In the matter so (here

give the name, if any) Printing Press." or the name "or description of book, document or newspaper", as the case may be.

(iii) The petition shall be written on foolscap water marked paper and shall be divided into paragraphs properly numbered. It shall be accompanied by certified copy of the order sought to be set aside and there shall also be annexed to the petition as exhibits of documents or copies thereof, which may not be available from the record of the authority against whose order the petition is directed and on which the petitioner proposes to rely. A copy of the notice of the forfeiture shall also be annexed to the petition as an exhibit. The petition shall state the ground or grounds on which the order of forfeiture is sought to be set aside.

257. Petition be presented before Deputy Registrar for placement before Special Bench.- (i) The petition with the affidavit and exhibits annexed thereto together with three spare copies of such petition, affidavit and exhibits shall be presented to the Deputy Registrar, who shall place it before a special Bench to be constituted by the Chief Justice.

(ii) The Deputy Registrar shall forthwith give notice to the filing of the petition to the Advocate General requesting him to obtain from the Government as soon as possible a copy of the particular newspaper, book or other document containing the words, signs or visible representations on which the declaration of forfeiture was based.

(iii) A notice in writing for the hearing of the petition shall be given to the Chief Secretary to Government and a copy of the petition, affidavit and the exhibits attached therewith shall accompany such notice.

258. Cost of proceedings in Court, if allowed.- Costs of the proceedings in the court, if allowed, shall be assessed by the court in the final order passed by it.

259. General rules so far as they are not inconsistent with any provision will apply to Application & Affidavits.- (i) So far as they are not inconsistent with any provision in these rules the general rules applicable to application and affidavits filed in the High Court shall apply to all applications and affidavits filed in proceedings under the Press and Publication Act.

(ii) Every summon and warrant of the arrest issued by the Court shall be in writing in duplicate, signed and scaled by the Registrar and shall be sent for service to the District Magistrate with the local

limits of whose jurisdiction the summons is to be served or the warrant executed.

260. Provisions of CPC & Rules relating to execution of decrees shall apply to execution of orders under Press & Publication Act.- Provisions of the Code of Civil Procedure and the Rules and Order relating to the execution of decrees or orders shall be applicable to the execution of orders passed by the Court on application under the Press and Publication Act.

CHAPTER-XXIII

Rules framed for Destruction of Records under Section (3) of the Destruction of Records Act, 1977

261. Judicial record shall consist of two parts 'A' & 'B'.- Every Judicial record, unless otherwise provided shall consist of two parts, namely Part A and Part B.

262. Entry of each paper in the General Index.- Each paper as it is filed shall be entered in a general index and shall be marked with the letter (A) or (B) according to the file to which it belongs.

263. Life of Part-A & Part-B.- Part A shall be preserved for ever and Part B for 12 years after the expiry of which it shall be destroyed.

264. Period shall be calculated from the date of last order.- The aforementioned period of 12 years shall be calculated from the date of the final order which in cases of appeal to the Supreme Court will be that of the decree or order of the Supreme Court.

265. Civil Record - Content of Part A & B.- (1) Part A of the record of every original civil case shall contain the following papers.-

- (i) The table of contents;
- (ii) The order sheet;
- (iii) Preliminary decree, if any, preceded by the judgment on which it is founded;
- (iv) The judgment;
- (v) The final decree;
- (vi) The copy of the judgment and decree in appeal;
- (vii) Plaintiff or application initiating the proceedings with any Schedule;
- (viii) The written statement of the defendant on the counter petition;
- (ix) Memorandum of the issues;
- (x) Award of arbitrators or petitions of compromise, if given effect to the decree also the return or report and the map and field book if any of a Commissioner in matters relating to immovable property if referred to or given effect to in

the decree but not any portion of the evidence taken by such Commissioner; also in the case of minors or lunatics any order of the Court sanctioning the compromise;

- (xi) Any paper whose preservation may be directed by the Presiding Judge or Judges.

(2) Part B shall contain all other papers.

266. Content of appeal, Part-A & Part-B.- (1) Part A of every appeal shall contain the following papers.—

- (i) The table of content;
- (ii) The Order Sheet;
- (iii) Remand order of the Court, if any; remand, if any;
- (iv) Type copy of the finding of the lower Court upon remand, if any;
- (v) Final Judgment of the Court;
- (vi) Decree;
- (vii) The memorandum of the appeal;
- (viii) The copies of the judgment and decree filed with the memorandum of appeal not inserted in the paper book of the case;
- (ix) The memorandum of cross-objection;
- (x) Award of arbitrators or petitions of compromise, if given effect to in the decree; also in the case of minors or lunatics, the order of the Court sanctioning the compromise;
- (xi) Paper-books, two copies when printed, one copy when not printed;
- (xii) Any paper whose preservation may be directed by the Presiding Judge or Judges.

(2) Part B shall contain all other papers.

267. Rule 265 and 266 shall also apply *mutatis mutandis* to the record of Civil Revision Cases.- Rules 265 and 266 above shall also apply *mutatis mutandis* to the record of all Civil Revision Cases, References, Writ Applications and Applications for leave to appeal to the Supreme Court.

268. Record of Civil Appeals, LPA's dismissed summarily shall consist of record-B file.- The record of Civil Appeals dismissed under Order XLI Rule 11, of Letters Patent Appeals dismissed summarily and of cases dismissed for default or in which the plaint or memorandum of appeal has been rejected or returned shall consist only of the Part B file, in which all papers shall be included.

269. Criminal Records.— (1) Part A of the records of Original Criminal Cases shall contain the following papers:—

- (i) The table of contents;
- (ii) The Order Sheet;
- (iii) The charge;
- (iv) The plea of accused, if any;
- (v) Order of the Presiding Judge;
- (vi) Warrant or other returned on execution of sentence;
- (vii) Copy of order commuting a sentence or suspending the execution thereof or omitting punishment;
- (viii) Any paper whose preservation may be directed by the Presiding Judge or Judges.

(2) Part B will contain all other papers.

270. Contents of Part-A record.— (1) Part A in Criminal Appeals, Revision References and Miscellaneous cases shall contain the following papers:—

- (i) the table of contents;
- (ii) the order sheet;
- (iii) the Judgement of the Appellate Court;
- (iv) Memorandum of appeal or petition for revision of letter of reference;
- (v) the judgment of the Lower Court;
- (vi) the explanation of the Lower Courts, if any;
- (vii) Paper-books; two copies when printed and one copy when not printed;
- (viii) Any paper whose preservation may be directed by the Presiding Judge or Judges.

(2) Part B shall contain all other papers.

271. Record of Criminal Appeals, & Revisions dismissed summarily shall consist of record-B file.— The records of Criminal Appeals and Revisions which have been summarily dismissed shall consist only of the Part-B file in which all papers shall be included.

272. Destruction of judicial record, books and papers be ordered by Chief Justice on the recommendation of Registrar.— The destruction of judicial records, books and the papers shall be carried out from time to time as may be ordered by the Chief Justice on the recommendation of the Registrar ; and such destruction shall be subject to the General Superintendence of the Deputy Registrar, be supervised by such officer, hereinafter called the Supervising Officer as may be appointed by the Chief Justice.

273. Mode of destruction.— The destruction of judicial records, books and papers shall be effected by tearing so as to render it unlikely that the documents so torn up may be used again. All court-fee stamps affixed to documents, which are to be destroyed shall be removed therefrom and burnt by, or in the presence of the Supervising Officer.

274. Record, books, papers certified to be of no value can be sold as waste.— After the Supervising Officer has certified that the destruction has rendered such judicial records, books and papers of no value, the paper shall be sold as waste, under the orders of the Registrar and the proceeds of the sale shall be credited into the Treasury of the State.

275. Record which shall not be destroyed.— The following records shall on no account be destroyed:—

- (i) Records connected with expenditure which is within the statute of Limitation;
- (ii) Records connected with expenditure on projects, schemes or works not completed, although beyond the period of limitation;
- (iii) Records connected with claims to service and personal matters affecting persons in the service;
- (iv) Orders and sanctions of a permanent character until revised.

276. Rules with regard to destroyed documents.— Where any document of which the destruction is ordered by these rules is, before it has been destroyed made evidence in any other suit or proceedings, the rule regulating the destruction will be in the rule applicable to evidence filed in such suit or proceedings where the period prescribed by such last mentioned rule is in excess of the period prescribed by the rule which originally governed its destruction.

277. Destruction of record shall be notified in the month of January each year.— On a date fixed by the Registrar in the month of January each year a notice shall be published in the Government Gazette, specifying the documents filed by the parties, which will be destroyed during the ensuing year, the cases to which such documents pertain, if any, the dates on which they will be destroyed, and giving warning that unless previously reclaimed by parties duly entitled, if any, before the said dates, destruction will, without fail ensue. All documents reclaimed by parties duly entitled shall be returned to such parties under orders of the Registrar.

278. Notice of every judicial record destroyed shall be under the signature of Supervising Officer.—A notice of every judicial record destroyed under the provisions of these rules shall be made under the signature of the Supervising Officer, at the time of destruction in the register in which the case is entered and also the general index prefixed to such record.

279. Return of document specified in Rule in Order XIII, Rule 9 of CPC.—A document shall not be returned within the period specified in Order XIII, Rule 9 of the Code of Civil Procedure until a certified copy thereof has been delivered to be substituted for the original nor shall a document be returned which has been ordered to be impounded or which has, by force of decree or order of the Court, became void or useless, or which is required by law to be filed and preserved.

By order of the High Court of Jammu and Kashmir.
