

CONSOLIDATED RULE

**RULES**  
**OF THE**  
**HIGH COURT OF ORISSA,**  
**1948**



**VOLUME-II**  
**1967 EDITION**

**(All Amendments till 31.01.2023 incorporated)**

## TABLE OF CONTENTS

---

### VOLUME II

---

### PART VII

#### *Rules under Special Acts*

---

CHAPTER		PAGES
XXV	Rules under section 27 of the Indian Press (Emergency Powers), Act, 1931 (XXIII of 1931)	1-2
XXVI	Rules under Section 99-F of the Criminal Procedure Code, Act V of 1898	3
XXVII	Rules under Indian Companies Act, 1913	3
XXVIII	Rules under the Banking Companies Act, 1949	3-16
XXIX	Powers of Attorney	16
XXX	Rules to regulate cases for confirmation of a decree for dissolution of marriage under section 17 of the Indian Divorce Act, 1869	16-17
XXXI	Rules to regulate references and applications under section 256 of the Indian Income-tax Act XLIII of 1961 and other Acts.	17-20
XXXII	Rules relating to cases under the Chartered Accountants Act, 1949 (XXXVIII of 1949)	20-22
XXXIII	Rules relating to appeals under the Representation of people Act (Act XLIII of 1951)	23-28
XXXIV	Rules to regulate Appeals under the Copy Right Act (Act XIV of 1957)	29-30
XXXIV-A	Rules under the Patents Act, 1970 (Act 39 of 1970)	30-35
XXXIV-B	The Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020.	36-66

## PART VIII

XXXV	Advocates	67-73
XXXVI	Rules regarding Advocates' Clerks	73-76
XXXVII	Rules under the Indian Bar Councils Act-	
	(A) Election and meetings	77-82
	(B) Proceedings before-	
	(i) Tribunal	82-84
	(ii) District Court	85-86
	(C) Costs	87
	(D) Bye-laws of Bar Council	87-90
	(E) Business Rules	90
	(F) Enrolment of Advocates	91-95
	(G) Appearance of an Advocate, who is not enrolled in the roll of Advocates in this Court	95
	(H) Miscellaneous	95
	(I) Professional etiquette	95-97

## Appendices

(A) The Orissa High Court Order, 1948	98-101
(B) The Orissa High Court (Amendment) Order, 1948	101
(C) The Letters Patent of the Patna High Court	102-112
(D) The Constitution of India	113-121

(E) The Supreme Court Rules, 1966	121-221
(F) The Supreme Court (Decrees and Orders) Enforcement Order, 1954	221-222
(G) Rules relating to professional conduct of Advocates.	222-225
(H) Forms prescribed by the High Court	225-227
(I) Forms under rule 10, Chapter XIX	228-237
(J) Forms under rule 11, Chapter XIX	238-248

**RULES OF THE HIGH COURT OF ORISSA, 1948****PART VII****RULES UNDER SPECIAL ACTS****CHAPTER XXV****Rules under Section 27 of the Indian Press (Emergency Powers) Act, 1931 (XXIII of 1931)**

1. These rules shall apply to all applications made to, and all proceedings taken in the Orissa High Court, under the Act.

2. Every application to the High Court under section 23 of the Act to set aside an order for security under sub-section (3) of section 3 or under sub-section (3) of section 7 or an order of forfeiture under sections 4, 6, 8, 10 or 19, or under sub-section (2) or section 12 shall be made by the presentation of a petition which shall be signed by the applicant and verified at foot by the affidavit of the applicant.

3. The petition shall be written in the English language on foolscap paper or other paper similar to it in size and quality, book wise and divided into paragraphs numbered consecutively. Dates and sums occurring in the petition shall be expressed in figures.

4. The petition shall be headed-

“In the High Court of Orissa” “In its Special Bench constituted under Act XXIII of 1931” and shall be instituted “In the matter of the (name if any) printing press or the (name or description) book, documents or newspaper, as the case may be”.

5. In an application to set aside an order for security, the petition shall state whether the applicant is the keeper of the printing press or is the publisher of the newspaper, as the case may be, in respect of which the order for security has been made, and all documents or copies thereof in proof of such statement together with a copy of the order for security under sub-section (3) of section 3, or under sub-section (3) of section 7 of the Act, as the case may be, shall be annexed as exhibits to the petition.

6. In an application to set aside an order for forfeiture, the petition shall state what the interest of the applicant is in the property in respect of which the order of forfeiture has been made, and all documents or copies thereof, in proof of such interest, together with a copy of the notice of forfeiture under sections 4, 6, 8, 10, or 19 or under sub-section (2) of section 12 of the Act, as the case may be, shall be annexed as exhibits to the petition.

7. The petition shall state relevant facts only and conclude with the ground or grounds on which it is sought to set aside the order for security or of forfeiture.

8. All documents in the vernacular other than Oriya, annexed as exhibits to the petition, and all such documents relied on by the applicant and intended to be tendered in evidence, shall be translated into English by a competent and duly qualified translator or translators and verified by the affidavit of the translator.

**9.** The petition, with exhibits annexed thereto, and their translations, if any together with a copy of such petition and exhibits with translations, shall be presented to the Chief Justice.

**10.** Notice in writing of the presentation of the petition together with a copy thereof and a copy of any exhibits annexed thereto shall be given by the Registrar to the Chief Secretary to the Government.

**11.** Within fourteen days of receipt of such notice, the Chief Secretary may send to the Registrar a notice of his intention to oppose such petition and if he does so he shall send to the Registrar such affidavits as he may rely on in answer to the petition.

**12.** The Registrar, on receipt, of such notice, and/or affidavit or affidavits, shall notify the petitioner and on his application shall supply him with a copy of the same.

**13.** The petitioner shall not file any affidavit in reply without obtaining leave from the Chief Justice and such leave shall be granted if at all on such terms as to time as the Chief Justice may direct. Such application for leave shall be made ex parte by the petitioner within one week of receipt by him of the notice provided for in rule 12 above and shall be made in the Chamber of the Chief Justice.

**14.** If the petitioner shall not, within one week of the notice provided in rule 12, make application as provided by rule 13 the evidence shall be deemed to be closed and after deposit by the petitioner of the printing cost the Registrar shall cause the paper book to be prepared according to the rules in Chapter XI for the preparation of paper books in appeals from original decrees and not less than 20 copies thereof shall be printed.

**15.** When the evidence is closed the Registrar shall, so soon as may be, obtain the directions of the Chief Justice as to the appointment of a Bench of three Judges and the fixing of a day for hearing which shall be not less than one week from the day when the paper book is ready. Such directions shall be notified by the Registrar to the petitioner and to the Chief Secretary to the Government.

**16.** The table of fees now in force in the Court shall be applicable to applications under the Act and proceedings thereon and costs payable in respect of such applications and proceedings shall be taxed, where so desired by the Taxing Officer.

**17.** The provisions of the Code of Civil Procedure and the rules and orders of this Court relating to execution of decrees and orders shall be applicable to the execution of orders passed by the High Court, on application under the Act.

## **CHAPTER XXVI**

### **Rules under section 99-F of the Criminal Procedure Code (Act V of 1898)**

1. The rules in Chapter XXV framed under section 27 of the Indian Press (Emergency Powers) Act (No. XXIII of 1931) shall, *mutatis mutandis*, be applicable to every application made and to every proceeding taken under section 99-B of the Criminal Procedure Code (Act V of 1898).

## **CHAPTER XXVII**

### **Rules under the Indian Companies Act, 1913**

The rules framed by the High Court of Judicature at Patna under section 246 of the Indian Companies Act (Act VII of 1913) as amended by Act XXII of 1936, shall, until varied or revoked by rules or orders made by this Court, apply with the necessary modifications as if made by it.

## **CHAPTER XXVIII**

### **Rules under the Banking Companies Act, 1949**

#### **(A)**

The following rules have been made by the High Court of Judicature, Orissa in exercise of the powers vested in them by Section 45 N read with 45 U of the Banking Companies Act, 1949 (X of 1949).

1. In these rules Act means the 'Banking Companies Act, 1949 (X of 1949)' as amended by the Banking Companies (Amendment) Act, 1953 (LII of 1953).

2. Every appeal under sub-section (1) of Section 45 N of the Act from an order or decision made in a Civil proceeding shall be presented before the Registrar, and every appeal from any sentence or order in a trial under the provisions of Sub-section (4) of Section 45-J shall be presented before the Division Bench presided over by the Chief Justice and if no such Bench is sitting or if the Chief Justice so directs to any other Division Bench of the Court. All such appeals shall be accompanied by a copy of the Order, decision or judgment appealed from and shall be filed within 30 days from the date of the order, decision or judgement in question.

3. The appeal shall be stamped under the Court Fees Act, 1870 (VII of 1870) as amended from time to time in its application to the State of Orissa:

Provided that no court-fee shall be charged on the appeal filed by or on behalf of any banking company in liquidation.

4. The appeal shall be heard by a Bench of two Judges.

5. In case of Civil appeals, if there be difference of opinion between the Judges composing the Division Bench, the same shall be referred to, and heard by, such Judge or Judges as the Chief Justice may appoint and shall be decided according to the opinion of the majority of Judges who have heard the appeal, including those who first heard it. The appeal shall be reargued before the Judge or Judges to whom it is so referred, either sitting apart from, or with the referring Bench as the Chief Justice shall direct.

6. The provisions of rule 47 of Chapter XI and of rules 31 and 33, Part XV regarding preparation of paper books shall apply, mutatis mutandis, to the appeals filed under this Chapter.

7. The provisions of rules in Chapters IV, VI, VII, VIII, X, XI, XII and XV of Part II and in Chapter XVII of Part IV and such other rules of this High Court shall, as far, as they may be applicable, apply to these appeals.

The following rules have been made by the High Court of Judicature, Orissa, in exercise of the powers vested in them by Section 45 U of the Banking Companies Act, 1949 (X of 1949) as amended by the Banking Companies (Amendment) Act, 1953 (LII of 1953).

### **Civil Proceedings**

1. In these rules 'Act' means the 'Banking Companies Act, 1949 (X of 1949)', and 'Court' means the 'Company Judge' or any other 'Judge' specially appointed by the Chief Justice for the purpose.

2. Every plaint shall, on presentation, be examined by the Stamp Reporter who shall certify thereon whether it is in due form, within time and the court-fees paid thereon is correct:

Provided that no court-fee shall be charged on a plaint presented by or on behalf of any banking company in liquidation.

3. The Deputy Registrar shall sign the list of plaints and the information registers of cases which shall be posted the same day the plaints and cases are filed for the information of the parties and their advocates.

4. The fee chargeable for serving or executing any process under this Chapter, shall be as laid down in rule 2 of Part IV, Chapter XVII:

Provided that in claims where the value does not exceed Rs.1,000/- the fee shall be Rs. 3/-, where not more than four persons are to be served with the same document and when such persons are more than four in number, then an additional fee of twelve annas for every such person in excess of four.

Provided further that no fee shall be chargeable for serving or executing any process issued by or on behalf of any banking company in liquidation.



5. In addition to the usual mode of service through Court, summons to the defendant by post shall issue simultaneously. The court-fee stamp if any for the issue of process together with the requisite number of the printed forms and postal covers for the issue of process through post shall be filed before the Deputy Registrar within three days from the date of the order.

6. All summonses, notices and processes of attachment or delivery of property shall ordinarily be served or executed through the Munsif within whose jurisdiction the person to be served resides or the property in question is situate. The party at whose instance such summons, notice or process is issued shall remit the required amount of fee or expenses to such Court by money-order and file the money-order receipt along with other requisites before the Deputy Registrar.

7. No court-fee shall be chargeable on any application for search, inspection or information and for verifying any petition by solemn affirmation or on oath, or for swearing or affirming an affidavit made by or on behalf of any banking company in liquidation.

8. In all money claims, the Registrar shall upon application by the defendant, either give leave to him to appear and defend the suit or place the application before the Court for orders. Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court think fit.

9. An applicant for an order to set aside a decree passed in his absence or for a review of judgement in any money claim not exceeding Rs.500 shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgement or give such security for the performance of the decree or compliance with the judgement as the Court may, on a previous application made by him in this behalf, have directed. Where a person has become liable as surety, the security may be realised in the manner provided by Section 145 of the Code of Civil Procedure.

10. The Advocate's fees shall, ordinarily, be one and half times of the fees therefor set forth in rule 28 of Part V, Chapter I of the General Rules and Circular Orders, Civil, Volume I.

11. The period of limitation for the issue of a notice under Order 21, Rule 2 of the Code of Civil Procedure to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified shall be 60 days and the time shall begin to run from the day when the payment or adjustment is made.

12. In execution of a decree obtained in any suit filed by or on behalf of any Banking Company (in liquidation):-

(i) no notice under order 21, Rule 2 shall be necessary when the execution case is filed against a judgment-debtor within one year from the date of decree.

(ii) no such notice shall be necessary when the execution case is filed against the legal representative of a judgement-debtor within one year from the date of decree, if the

Registrar or the Court has, on a previous execution application ordered the same to issue against him, and

(iii) no notice shall be necessary, in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application is made within one year from the date of the last order against whom execution is applied for passed on any previous application for execution.

13. No claim under Rule 58 or application under Rules 90, 91 and 100 of Order 21 shall be entertained if not made within 15 days from the date of attachment or sale or delivery of property, as the case may be and no such claim or application shall ordinarily be admitted, unless the Court is satisfied that prima facie it is a fit case for admission.

14. Where any property is ordered to be sold by public auction in execution of a decree, the decree-holder shall file before the Deputy Registrar an additional copy of the sale proclamation therefor for the purpose of affixing the same upon a conspicuous part of the Court House where the sale will be held.

15. A writ of arrest under Order 21, Rule 38 or an order for the sale of property shall ordinarily be issued to the Court of the lowest grade having jurisdiction and competent to try the suit from which the proceedings have arisen and such Court shall have the same powers in executing the writ or order as if it had been issued by itself.

The decree-holder shall remit the subsistence allowance for the judgement-debtor to the said Court by money-order in advance and file the money-order receipt before the Deputy Registrar along with other requisites for issue of the writ.

16. In addition to the rules of this part, the rules and forms Contained in the General Rules and Circular Orders shall apply as far as may be to suits and applications filed under the Act.

## C

The following rules have been made by the High Court, in exercise of the powers vested in them by Section 45 U of the Banking Companies Act, 1949 (X of 1949).

1. In these rules Act' means the Banking Companies Act, 1949 (X of 1949) and 'Court' means the 'Company Judge' or any other Judge' specially appointed by the Chief Justice for the purpose.

2. Save as is expressly provided in these rules the rules framed by this High Court under the Indian Companies Act and the provisions of the Civil Procedure Code so far as they are not inconsistent with these rules shall apply to the proceedings under this Act.

3. All applications under the Act shall be verified either by solemn affirmation or on oath, or supported by a separate affidavit annexed to the same.

4. Where a Special Officer has been appointed under Sub section (3) of Section 37 of the Act, the order of appointment shall be in Form No. 1 appended to these rules. The Special Officer shall be paid such remuneration and necessary expenses as may be determined by the Court, which shall be paid, unless the Court otherwise directs, from the assets of the Banking Company.

5. In addition to the advertisement and notice provided for in the rules framed under the Indian Companies Act, 1913 notice of application for winding up a Company made by persons other than the Reserve Bank shall be served on the Reserve Bank.

6. Where an order for winding up is made under the Act, a notice in Form No. 2 appended hereto shall immediately be sent to the Official Liquidator informing him that the order has been made.

7. (1) As soon as the report of the Official Liquidator containing a list of suits and proceedings by or against the Company pending in any Court or Courts is filed by the Official Liquidator under Sub section (3) of Section 45 C of the Act, the Registrar shall post the same before the Court for direction.

(2) If the Court directs notice to any party or parties, it shall be by registered post, acknowledgement due, and shall require the party to appear in Court on the date fixed and show cause why the suit or proceedings shall not be withdrawn to the High Court to be dealt with according to law.

(3) On the day fixed in the notice as above or on any adjourned date, the Court may, after hearing the parties, withdraw to itself any suit or proceeding. The suits and proceedings so withdrawn or transferred to the High Court shall be dealt with in the same manner as claims and questions under Section 45 B of the Act.

(4) Every such order transferring or withdrawing any suit or proceeding shall be communicated with all convenient speed to the Court in which it is pending and shall require the records to be sent to the High Court.

8. Notwithstanding anything to the contrary contained in the rules framed under the Indian Companies Act, 1913, every depositor whose name appears as a depositor in the books of the banking company shall be admitted as a creditor for the amount so appearing in the books of the Company without proof, unless the Official Liquidator has reason for doubting any particular entry in which case, he may, subject to the orders of the Court, call upon the depositor to prove his claim. The Official Liquidator shall notify every depositor, so admitted without proof of the amount for which he has been admitted as a creditor.

9. The affidavit in proof of debt shall, in addition to the matters specified in Form No. 38 of the Indian Companies Act 1913, contain a statement as follows:

"At the commencement of the winding up, I had the following dealings and accounts with the Banking Company and its branches:

(Here set out particulars).

Apart from what is set out above, I had no dealings with the Company on the relevant date and do not owe any sum to the Company on any account whatsoever."

10. The Official Liquidator shall exhibit separately in the lists of debts and claims to be filed by him under Rule 101 of the rules framed under the Indian Companies Act, 1913, the debts due to the depositors as appearing in the books of the Company of which he has no reason to doubt and those of such debts in respect whereof he has called for proof.

11. (1) The Official Liquidator may from time to time file into Court a list or lists of debtors under Section 45-D of the Act in Form No. XIV prescribed under Rule 15-A of the Banking Company Rules, 1949, framed by the Central Government.

(2) Every person liable as guarantor shall also be included in the list.

(3) In the case of any debt for which the Company holds security of immovable property, the Official Liquidator shall make or cause to be made a search in the Office of the Registrar or Assurances of the District or Sub-district in which the property is situate, for not less than 12 years prior to the making of the list of debtors.

(4) Subject to any directions of the Court in this behalf, the Official Liquidator shall give notice of the day appointed by the Court for hearing to every person included in the list. The notice shall be by registered post, acknowledgement due, to the address of the debtor as entered in the registers of the Company and contain all the particulars mentioned in the said list so far as they relate to the debtor to whom the notice is addressed. Such notice shall be in Form No. 3 appended hereto and shall be considered as served at the time the same ought to be delivered in due course of delivery by the post office and notwithstanding the same may be returned by the post office."

(5) If the debtor desires to show cause against the inclusion of his name in the list of debtors, he shall file an affidavit and furnish a copy thereof to the Official Liquidator or his attorney or advocate at least seven clear days before the day appointed for the settlement of the list.

(6) A debtor shall be entitled to plead by way of set off or counter claim any amount which he may claim against the Banking Company.

(7) The order of the Court shall set out the name or names of the debtors, the amount of the debt and the costs, if any payable, the reliefs, if any, against any guarantor or in respect of the realisation of any security, or by way of instalment payment allowed by the Court.

(8) The Court may at the time of making an order for the inclusion of any debtor in the list of debtors assess and fix the costs payable by such debtor to the Banking Company in such manner as it thinks fit.

When a claim against a debtor is disallowed in whole or in part the Court may award cost to the successful debtor, and such cost shall be payable out of the assets of the Banking Company.

(9) As soon as practicable after the settlement of the debt, a certificate in Form No. 4 shall issue under the seal of the Court and signed by the Deputy Registrar in terms of Sub-section (6) of Section 45-D of the Act in respect of each debtor placed on the list setting out the relevant particulars.

12. (1) As soon as practicable after an order of winding up is made or within such time as the Court may grant, the Official Liquidator shall file into Court the report required by Sub-section (1) of Section 45-G of the Act.

(2) After hearing the Official Liquidator, the Court may direct notice to issue to persons concerned to show cause why they shall not be publicly examined.

(3) After hearing all the parties, the Court may if it desires to direct the public examination of any one or more persons, fix a date for such examination.

(4) The Official Liquidator shall notify the creditors and contributories of the Banking Company of the date fixed under the preceding sub-rule by advertisement in newspaper or in such other manner as the Court may direct.

(5) Rules 174 to 176 of the rules framed under the Indian Companies Act, 1913 shall, as far as may be, apply to any public examination directed by the Court under Section 45-G of the Act.

(6) The provisions of the rule shall, as far as may be, apply to any public examination under Section 45 L of the Act. The functions of the Official Liquidator under the said rule shall be exercised by such person as the Court may direct.

13. (1) The Official Liquidator shall report to the Court as soon as possible after the commencement of the winding up, and thereafter from time to time, any offence or offences punishable under the Act or the Indian Companies Act, 1913 or the Companies Act, 1956 and any other offence with which the accused may under the Code of Criminal Procedure, 1898 (V of 1898) be charged at the same trial which may have been committed by any promoter, director, manager or officer of the Banking Company either prior to the commencement of the winding up or after the commencement thereof. On such report, after hearing the party's concerned if necessary, the Court may decide having regard to the gravity of the offence and the circumstances in which it was committed, whether it is fit for summary trial or should be taken commission of under Sub-section (4) of Section 45 J of the Act.

(2) Any creditor or contributory or other person alleging that any such offence (as may be tried by the High Court) has been committed shall apply to the Court for directions. The Court may refer the matter to the Official Liquidator for examination and report and on his report pass such orders as it may think fit.

(3) The High Court may in all cases either call upon the proper Law Officer of the State to conduct the prosecution or sanction necessary legal assistance to the Official Liquidator for conducting the prosecution.

(4) All offences triable under Part III-A of the act may be compounded with the leave of the Court.

14. (1) An appeal shall lie from any sentence or order in a trial under the provisions of Sub-section (4) of Section 45 J of the Act to a Division Bench of the Court, with the leave of such Division Bench or of the Judge who tried the case.

(2) In all cases in which the accused has been tried summarily no appeal shall lie except from a sentence of imprisonment.

15. (1) In any case in which the Reserve Bank has filed a report under sub-section (2) of Section 45 Q of the Act the Registrar shall forward a copy thereof to the Official Liquidator. Where the Central Government has brought to the notice of the High Court any substantial irregularity in the winding up proceedings under Sub-section (3) of Section 45 Q of the Act, a copy of the Central Government's communication shall also be forwarded to the Official Liquidator.

(2) The Official Liquidator shall, as early as possible, after the receipt of the copy of such report or communication, file an application supported by his own report suggesting such action as he may consider necessary or appropriate in the light of the Reserve Bank's report. The Court may thereupon pass such orders as it may deem fit after notice to the Central Government and the Reserve Bank or any other person as the circumstances may require.

16. (1) The Reserve Bank may on application to the Registrar inspect the records relating to any proceedings in the winding up of a Company.

(2) No court-fee shall be charged on an application under this rule.

17. (1) Where an offence triable under section 45-J (1) is tried summarily, the procedure provided in the Code of Criminal Procedure for the trial of summons cases shall so far as it is not inconsistent with the provisions of the Act, be applicable. Where, however, the offence to be tried summarily under section 45-J(1) is tried jointly with an offence under section 45-J (2), the procedure provided in the Code of Criminal Procedure for the trial of Warrant cases shall be applicable provided that it shall not be necessary to adjourn the case under section 256 (1) of the Code of Criminal Procedure before requiring the accused to enter upon his defence or inquiring of him whether he wishes to further cross-examine any witness whose evidence has been taken.

(2) Where the offences triable under section 45-J are not tried summarily, the procedure provided in the Code of Criminal Procedure for the trial of Warrant cases shall, so far as it is not inconsistent with the provisions of the Act, be applicable.

18. The Court may at any time grant bail to the accused on such terms as it thinks proper.

19. Any person against whom a complaint is filed by the Official Liquidator under the Act shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that-

(a) He shall not be called for or examined as a witness except with his consent;

(b) His failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-

(i) The proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his advocate asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of the defence is such as to involve imputations on character of the prosecutor or of any witness for the prosecution, or

(iii) He has given evidence against any other person charged with the same offence.

20. The provisions of rule 11 regarding settlement of the list of debtors under section 45-D shall, as far as may be, apply to an order allowing a Banking Company to settle the list of its debtors under section 45 M of the Act. The functions of the Liquidator under the said rules shall be exercised by such person as the Judge may direct.

21. When the Court grants leave under section 45-T (3) of the Act for recovery of any amount found due to the Company, the Official Liquidator may apply to the proper Revenue Authorities to recover the said amount as an arrear of land revenue.

22. No person, other than the parties to the proceedings and the Official Liquidator, shall be entitled to inspection of any report made by the Reserve Bank of India or be entitled to receive a copy thereof without an order of the Court.

APPENDIX

FORM No. 1

(Rule 4)

Order appointing Special Officer

(Title)

.....upon the application of.....and upon reading .....and upon hearing the Court doth order :

(1) That the said Shri A. B.

the Court Liquidator be and hereby is appointed the Special Officer for the said Bank, Limited, pending disposal of the application noted above, or until further orders.

(2) That the said Shri A. B.

the Court Liquidator do forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the said Bank, Limited is or appears to be entitled and which are found at the..... registered Office of the said Bank at.....and at all its branches at.....

(3) That all Officers of the said Bank do assist the Special Officer in every respect in carrying out this order.

(4) That the Special Officer does submit a report to the Court on or before the..... day of..... 20.....

(5) That the Special Officer be at liberty to apply to the Court for directions, if necessary.

Registrar



FORM No. 2

(Rule 6)

Notice to the Court Liquidator

(Civil)

To

The Official Liquidator, High Court.....

.....Upon the application of.....and upon reading

.....and upon hearing the Court has this day

ordered that the said..... Bank Limited whose registered

office is situate at..... be wound up under the provisions

of the Banking Companies Act, 1949.

Registrar

SCHEDULE

1. Name and address of the debtor
2. Amount of debt due to .....by the debtor
3. Rate of interest, if any and the.....  
date up to which it has been calculated.
4. Description of papers, writings and document, if any relating.....to  
the debtor.
5. Relief or reliefs claimed against the debtor
6. Any other matter relevant for enquiry

FORM No. 3

[Rule 11 (4)]

Notice to the debtor

UNDER SECTION 45-D OF THE BANKING COMPANIES

ACT

(Title)

To

WHEREAS the Official Liquidator (petitioner) has filed a list of debtors including you for settlement of the list of debtors under Section 45-D (3) of the Banking Companies Act, 1949 claiming a sum of Rs.... with interest as calculated up to.....from you as per the particulars detailed in the schedule on the reverse and whereas this Court has fixed.....for the settlement of your debt, you are hereby required to appear personally or through a lawyer on..... at..... A. M. in this Court and to show cause why your debt should not be settled and a certificate issued under Section 45-D (6) for the amount due from you together with future interest at such rate, as the Court thinks fit, and costs. In case you fail to show cause, the case will be heard *ex parte* and determined according to law.

Given under my hand and seal of the Court, this day of 20

*Deputy Registrar*

## FORM No. 4

under Section 45-D (6) of the Banking Companies Act, 1949 and Rule 11 (8)

(Title)

Official Liquidator..... petitioner.....

.....Debtor.

Whereas in Misc. Judicial Case No. ....of  
20.....the Official Liquidator applied for settlement of debt in respect of  
..... the debtor above named an order was made by the  
Court on day of.....20.... .....in the presence of Shri  
.....Advocate, for the Official.....  
Liquidator and Shri.....Advocate for the said debtor;

It is hereby certified that the..... (debtor) was adjudged liable to and  
directed to pay to the Official Liquidator the sum of money with interest and costs specified  
hereunder :

Name and address of the debtor	Amount of debt	Rate of Interest	The amount of Costs awarded and by whom and out of what funds and in what proportion such costs are to be paid	Relief granted*

\*Here state :-

(a) the relief against any guarantor;

(b) in the case of debts secured by mortgage the particulars of the mortgaged property,  
the date of the order of sale and any other direction or directions of Court;

(c) in the case of payment by instalments, the particulars of the order as to payment of  
the instalments.

## D

Rules under the provisions of the Insolvency Act, 1920 (Act V of 1920) arising out of Banking Companies (in liquidation).

The rules framed by the High Court in Part 11, Chapter 1 at pages 52-58 of the General Rules and Circular Orders, Civil, Vol. I in respect of Provincial Insolvency Act, 1920 shall apply with the necessary modifications to cater filed in the High Court

## **CHAPTER XXIX**

### **Powers-of-Attorney**

1. The Registrar shall have the custody of all instruments deposited in this Court under section, 4 clause (a) of the Powers-of Attorney Act, VII of 1882.

2. A register of all such documents shall be kept under the following headings:-

(1) Description of documents

(2) Date

(3) By whom deposited (4) When deposited

3. The following fees shall be paid by means of court-fee stamps under section 4, clauses (a), (b), (c) –

	Rs. P
For filing and registering every power, and filing every other document.	2.00
For a Certified Copy - Where the copy is presented by the party at ten Paise per folio	0.10
Where the copy is prepared in the Registrar's Office at 25 Paise per folio	0.25
For searching and inspecting each set of documents	0.50

## **CHAPTER XXX**

### **Rules to regulate cases for confirmation of a decree for dissolution of marriage under section 17 of the Indian Divorce Act, 1869**

(1) In all cases of reference to the High Court by a Subordinate Court under section 17 of the Indian Divorce Act, 1869 (Act IV of 1869), no application for confirmation by the plaintiff in the case need be filed. After the lapse of three months from the date of the decree passed by the lower court and awaiting confirmation, notice may be issued to the parties on both sides, by the High Court suo motu. Within a reasonable time after service of notices, and

after lapse of the statutory period of six months, the reference itself is to be posted for, disposal irrespective of any motion by the parties concerned.

(2) The paper-books are to be prepared by the Court suo motu without awaiting service of notices:

(3) In all such cases, if the parties do not appear through a lawyer at the final hearing, the order finally passed by the Court disposing of the reference (apart from the judgement) should be communicated by the Court to all the parties direct.

## **CHAPTER XXXI**

### **Rules to regulate references and applications under section 256 of the Indian Income Tax Act (XLIII of 1961) and other Acts**

1. An application under sub-section (2) of section 256 of the Income Tax (hereinafter referred to as the Act) shall state in precise language the question or questions of law upon which the Appellate Tribunal is required to make a reference to the Court and contain a concise statement of the material facts out of which the same arises. The application shall be accompanied by certified copies of the order of the Appellate Tribunal refusing to state the case, the order of the Appellate Tribunal under Sub-section (1) of Section 254 of the Act, the Order of the Appellate Assistant Commissioner and the order of the Income Tax Officer as also an affidavit by the assessee or of his authorised agents, based on personal knowledge either of the assessee or of his authorised agent, to the effect that he has not withdrawn his application for reference under Section 256 (1) of the Act before the said Tribunal.

<sup>1</sup>[1.A-An appeal preferred under Section 23 (4) (c) (i) of the Orissa Sales Tax Act, 1947 shall be registered as a Tax Appeal and shall be disposed of by a Bench of two Judges. The application shall be accompanied by (1) an assessment order passed by the Sales Tax Officer; (2) certified copy of order passed by the Assistant Commissioner, Sales Tax and (3) certified copy of the order passed by the Commissioner of Sales Tax.]

2. The application <sup>2</sup>[or Memorandum of tax Appeals preferred under section 23(4) (c) (i) of the Orissa sales tax (Amendment) Act, 1976] its enclosure shall be accompanied by two copies thereof and shall be presented to the Registrar. It shall also be accompanied by an index of all the documents and annexures relied upon by the applicant setting forth in chronological order brief description of each of such documents and annexures with date.

3. The Registrar may for sufficient cause shown either dispense with any copy or copies mentioned in rule 2 or allow any such copy or copies to be filed within such further time as he may deem fit to allow and may extend such time.

4. The Registrar shall, after he is satisfied that there are no defects in the application filed under Sub-section (2) of Section 256 direct that notice thereof be served on the opposite party to appear and show cause why the application should not be granted:

---

<sup>1</sup> Added vide C.S. NO.4, Dated 19.05.1978

<sup>2</sup> Inserted vide C.S. NO. 5, dtd.19.05.1978

Provided that when a party has a retained lawyer, service of a copy of applicant on the said lawyer before the filing of the same, shall be deemed to be due service of notice.

**5.** Every notice under Rule 4 shall be accompanied by a copy of the application.

**6.** Within thirty days of service of notice under rule 4 the opposite party may submit a reply to the application accompanied by an affidavit after serving a copy thereof on the on the advocate for the petitioner. Such reply shall be accompanied by two copies thereof. It shall also be accompanied by an index setting forth in chronological order brief description of any document and annexure with date.

**7.** Advocates for the parties shall be bound to accept service on behalf of the party represented by them of any notice issued by the Court or Appellate tribunal, as the case may be, until the case has been finally disposed of. Any change of advocates appearing for a party shall immediately be notified by it to the Court, the Appellate Tribunal and the opposite party.

**8.** An application or reference as the case may be under this chapter shall be laid for hearing before the Division Bench presided over by the Chief Justice and if no such bench is sitting or the chief Justice so directs, to any other Division Bench or Court.

**9.** On the date fixed for the hearing of the application, the Court, after hearing the parties, if they appear either pass an order dismissing it or, in the case of an application under sub-section (2) of section 256 of the Act, require the Appellate Tribunal to state the case and to refer it to the Court.

**10.** The statement of a case referred to the Court by the Appellate Tribunal shall indicate the precise question or questions of law arising in the case and concisely state such facts as may be necessary to enable the Court to decide the same. It shall also contain reference to all such documents as may be necessary to enable the Court to decide the question or questions and shall be accompanied by true copies of such documents or relevant extracts therefrom.

**11.** On receipt of the statement of a case referred to the Court by the Appellate Tribunal under sub-sections (1) or (2) of section 256 of the Act, notice thereof shall be given to the parties and the Registrar shall call upon the party at whose instance the reference has been made to cause to be prepared a paper-book of the case within such time as the Registrar may allow. The Registrar may for sufficient cause shown extend such time.

**12.** (1) Every paper-book shall have attached to it a fly sheet in the prescribed form and a table of contents and shall contain copies of the following papers, namely:

- (i) Application
- (ii) Reply to application
- (iii) Any order passed by the Court under sub-section (2) of section 256 of the Act.

- (iv) Statement of the case and documents or extracts, if any forming part of the case.
- (v) <sup>3</sup>[Section 23 (4) (c) (i) of the Orissa Sales tax Ac, 1947 as amended by Orissa Sales Tax (Amendment) Act 3 of 1976.]
- (vi) Any objection by a party to the statement of the case.
- (vii) Order of the Appellate Tribunal under Section 254 of the Act.
- (viii) Order of the Appellate Assistant Commissioner
- (ix) Order of the Income-tax Officer.

(2) Where the case is referred back to the Appellate Tribunal under section 258 of the Act, a copy of the statement of the case as added to or altered by the said Tribunal shall also be included in the paper-book.

(3) If any party desires that a copy of any other document be included in the paper-book on the ground that it is necessary for the determination of the question or questions of law referred to the Court, it shall make an application in writing to the Registrar fully explaining the relevancy of such document. The Registrar shall give notice of the application to the opposite party and may after hearing any objection that may be field by such party, either direct a Copy or such document be included in the paper-book, or place the matter before the Bench for orders.

(4) The paper-book shall, unless otherwise ordered, be typed or roneoed at the cost of the party at whose instance the case is referred and such cost shall be cost in the cause.

**13.** Copies of any order passed by the Court or any judgement delivered by it under sub-section (2) of section 256 or section 258 shall be sent forthwith to the Registrar of the Appellate Tribunal under the seal of the Court and the signature of the Registrar together with two uncertified copies of the same.

**14.** Costs taxable as Advocates' fees shall be determined by the Court having regard to the provisions of rules of Chapter XVII of Part IV of these rules.

**15.** The Rules contained in this Chapter shall, as far as may be and with necessary modifications and adaptations also apply to proceedings of a similar nature under any other Act including those under:-

- (i) Section 57 or 60 of the Indian Stamp Act, 1899,
- (ii) Section 27 of the Workmen's Compensation Act, 1923
- (iii) Section 21 of the Excess Profits Tax Act, 1940 read with section 256 of the Income Tax Act,
- (iv) Section 19 of the Business Profits Tax Act, 1947 read with section 256 of the Income Tax Act.,

---

<sup>3</sup> Inserted vide C.S. No.6 dtd.19.05.1978

<sup>4</sup>[(v) Section 23(4) (c) (i) of the Orissa sales tax (Amendment) Act, 1947 as amended by the Orissa Sales Tax Act 3 of 1976.]

(vi) Section 24 of the Orissa Sales Tax Act, 1947,

(vii) Section 29 of the Orissa Agricultural Income Tax Act, 1947 and

(viii) Section 64 by of the Estate Duty Act, 1953,

<sup>5</sup>[(ix) Section 27 of the Wealth Tax Act 1957,]

16. The rules regarding applications and affidavits in Chapter Part II of those rules shall apply mutatis mutandis to applications under this Chapter.

17. The rules regarding preparation of paper-books etc. Chapter XI (C), Part II shall, so far as practicable, apply to the c under this Chapter.

## **CHAPTER XXXII**

### **(Rules relating to cases under the Chartered Accountants Act, 1949**

#### **(XXXVIII of 1949)**

The following rules shall regulate the procedure in regard to cases received by the High Court under section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as the Act):-

1. All cases received by the High Court under section 21 of the Act shall be registered as a 'Civil Reference Case' and entered in the Register of reference cases.

2. The Council of Institute of Chartered Accountants of India (hereinafter referred to as the Council) shall forward to the High Court one set of material papers relating to the enquiry which will be regarded as the original set. It shall include the following records:-

(a) The finding of the Council

(b) The report of the Disciplinary Committee

(c) Complaint or information

(d) Written statement of defence

(e) Depositions of witnesses, affidavits, exhibits and other oral and documentary evidence.

(f) Notes of the hearing before the Disciplinary Committee and the Council.

---

<sup>4</sup> Added vide C.S. NO.6, Dated 19.05.1978

<sup>5</sup> Added vide C.S. NO.2, Dated 02.11.1967 and renumbered vide C.S No. 6 Dtd. 19.05.1978



(g) Such other papers which were before the Disciplinary Committee and the Council as the Council may consider relevant or the High Court may require for the disposal of the case.

The Council shall also furnish the High Court with two additional authenticated copies of the papers aforesaid.

3. A translation in English of the documents which are not in that language or in Oriya and are included in the material papers shall be furnished by the Council under its own authority. If the High Court considers that an official translation of any document or documents is necessary, such translation shall be made in the High Court, the expenditure incurred in that behalf being recovered from the Council.

4. In case the Central Government or any person interested requires copies of the material papers. The Council shall furnish such copies on application made to it subject to such terms and conditions as may be prescribed by the Council.

5. The Council shall forward along with the material papers a memorandum containing the full and correct postal addresses of all persons or authorities on whom notices are required to be served under section 21 (2) of the Act.

6. On the case being numbered, the Registrar shall fix a date for the hearing of the case and shall cause notice to be issued under section 21 (2) of the Act, in the form prescribed in the annexure hereto. The date of hearing shall be so fixed that there will be an interval of not less than 15 days between the date of service of notice and the date of hearing.

Such notices shall be sent by registered post with acknowledgement due.

7. The case shall be heard by a Bench of not less than two Judges

8. The Deputy Registrar shall send a certified copy of any order that may be passed by the High Court in the case to the Secretary to the Council and to the Secretary to the Government of India (Ministry of Finance).

**ANNEXURE**

**IN THE HIGH COURT OF JUDICATURE, ORISSA, CUTTACK**

No.....of.....20

In the matter of the Chartered Accountants Act (Act **XXXVIII** of 1949).

and

In the matter of a member of the Institute of Chartered Accountants of India.

The Council of Institute of Chartered Accountants of India.....

Referring authority

.....Respondent

To

(1).....Member of the Institute the Respondent above named.

(2) Secretary to the Council of the Institute of Chartered Accountants of India.

(3) Secretary to the Government of India (Ministry of Finance, New Delhi).

Whereas the Council of the Institute of Chartered Accountants of India has forwarded to this Court its finding, dated the.....,20.. and the report of the Disciplinary Committee, dated the.....20... in the above case;

Now take notice that the High Court will proceed to hear the said case and pass orders thereon on the day of 20... when you may appear either in person or by an advocate of the Court and make your submission to the Court or else the matter will be disposed of *ex parte*.

By order of the Court

High Court of Judicature, Orissa.

Deputy Registrar

Dated the.....20

**CHAPTER XXXIII**

**<sup>6</sup>Rules to regulate proceedings under Section 80-A of the Representation of the People Act, 1951 (Act 43 of 1951)**

1. Interpretation-"The Act" shall mean the Representation of the People Act, 1951.
2. All proceedings in the High Court in respect of election petitions shall be conducted in English.
3. All petitions, applications, written statements, affidavits, counter affidavits or annexures shall be type-written neatly and legibly with double space between the lines and with sufficient margins. The parties shall prepare the table of contents with reference to the pages of the papers filed by them.
4. Every Election petition accompanied by copies as prescribed under section 81(3) of the Act shall be presented under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), either in person or by an Advocate duly authorised by the parties concerned, to the Registrar or in his absence to the Deputy Registrar, Additional Deputy Registrar or the Assistant Registrar during usual office hours of any working day.
5. Every Election petition shall, in addition to the contents prescribed by the Act, more particularly of the provisions of sections 82 and 83 thereof, contain information as to the date of the Election of the returned candidate and if there be more than one returned candidates at the election and the dates of the elections are different, the later of the two dates, and shall also show that the Election petition is within the time according to the provisions of section 81 of the Act and that security for costs have been deposited as prescribed under section 117 of the Act.
6. The election petition shall be presented along with the necessary copies. All copies of the petition shall conform to the original, page by page. Immediately after its presentation, the date of presentation shall be endorsed thereon and shall be entered in a special register maintained, for the registration of election petitions in the following pro forma:-

Serial no.	Date of Presentation	Name of the Petitioner	Name of the Respondent	Nature of the Petition	Name of the Advocate, if any, for the petitioner
1	2	3	4	5	6

<sup>6</sup> Substituted vide C.S. No.1 Dtd.18.04.196

Name of the Advocate for the respondent	Date of disposal in the High Court	Result of the decision of the High Court	Date of disposal by the Supreme Court, if any,	Result of the decision of the Supreme Court
7	8	9	10	11

7. Every election petition shall, on presentation, be examined by the Stamp Reporter, who shall certify thereon whether the petition is in conformity with the requirements of law and the rules applicable to the same and the petition with the defects or omissions if any, as reported by the Stamp Reporter, shall be referred to the Judge who has been assigned by the Chief Justice for the trial of the Election Petition for orders under section 86 of the Act.

8. If the petition is not dismissed under section 86(1) of the Act, a summons in the annexed form A shall be issued to the respondents to appear before the High Court on a fixed date and answer the claim or claims made in the petition. Such date shall not be earlier than three weeks from the date of the issue of the Summons. The summons shall be for written statement and settlement of issues and shall be served on the respondent in the manner provided in the Code of Civil Procedure with the greatest expedition simultaneously through Court and by registered post prepaid for acknowledgment.

9. The respondents who file written statements or recriminatory statements and notices as provided under Sections 97 (2) of the Act, shall furnish copies of such written statements or recriminatory statements or notices for the use of the petition and all the other respondents as the case may be. Where a recriminatory statement under Section 97 (2) alleges any corrupt practice, the statement and the notice be signed and verified in the manner laid down in order 6 rule 15 of the Civil Procedure Code for verification of pleadings.

10. After the pleadings in the election petition are received, a date shall fixed, at the direction of the Judge for (1) discovery of documents, (2) inspection documents disclosed, and (3) the production of documents which are in the possession and power of the parties. The documents produced shall be accompanied by accurate list thereof prepared in form No. (1) 10 of G. R. & C. O., Civil, Vat and a copy of the list be served on the Advocate appearing for the other side.

11. Issues will then be settled and the election petition shall be posted for a within seven days of the settlement of issues, parties shall file list of witnesses pay the process fees and deposit the travelling allowance, diet allowance, e provided in rule 19 (a), Chapter 1 part V of the G. R. & C. O., Civil, for those who are required to be summoned.

12. Parties are entitled to produce their witnesses without a summons on the date of hearing, provided they have filed list containing their names as required rule 10. Parties are also entitled to apply at their risk for issue of summons of their witnesses included in the aforesaid list provided they apply for issue same sufficiently in advance together with the process fee required for the p but the trial of the case will not be held up for the non-

attendance of such witness in spite of the fact that summons has been issued for their attendance.

13. Process fees to be paid shall be the same as provided in rule 2, Chapter XV Part IV of the Orissa High Court Rules, 1948, Volume I.

14. A party applying for a summons to a witness shall be required to deposit the time of applying for summons, a sum sufficient to cover the travelling and allowance, etc. of the witnesses as provided in rule 19 (a), Chapter I, part V of G. R. & C. O. Civil, Vol. 1 Payment shall be made to witness out of the amounts so deposited after the witness has given evidence or be discharged by the Judge. Process forms shall be filed in the annexed form "B" along with the application for service of summons on the witnesses.

15. As soon as an order is passed by the Judge under sub section (2) of section or under clause (b) of sub section (3) of section 110 or under subsection (2) of section 112 or under section 116 directing any matter to be published in the official gazette or otherwise than in the official Gazette, the office shall get the same published at cost of such parties as the Judge may direct in that behalf. The matter directed to be published in the official gazette shall be published in the Orissa Gazette or the gazette of India, as the case may be.

16. As soon as an election petition is dismissed under sub-section (1) of section 86, or the same has been finally disposed of on merits, as provided for under section 98 and 99 or the Judge passes an order under sub-section (1) of section 116-B) office shall intimate the order or the decision of the court (i) to the Election Commission and (ii) the Speaker or the Chairman, as the case may be, of the House of Representatives or of the State Legislature concerned; and thereafter, as soon as possible, it shall also forward to the Election Commission an authenticated copy of the judgment and the formal order of the Court. The office shall also report to Election Commission when an election petition is allowed to be withdrawn under section 86 or when orders are passed in that behalf by the Court. Where an election petition abates and no attempt has been made for substituting another person for continuing the election petition as provided under section 116 and the court passes a final order treating the election petition as abated, the office shall also report to the Election Commission.

17. An Advocate intending to act for a party shall file a Vakalatnama signed by party. Service of notices, processes etc. on the Advocate shall be deemed as sufficient service on the party concerned.

18. A party shall be entitled to Advocate's fees as may be decided by the Judge.

19. The security for cost shall be paid in cash and shall be deposited with the cashier during office hours. Where pending the trial of the election petition, costs are directed to be paid or deposited by a party who has not deposited any amount as for costs, the amount of such costs shall be similarly deposited with the cashier.

20. No document in any language other than English shall be admitted in evidence if it is accompanied by an English translation which shall either be a translation, the accuracy of

which is certified by an Advocate of the High Court or by the I translator translated at the costs of the parties, who want to rely upon it;

Provided the filing of the said translated copy may be dispensed with by an order Judge.

Provided further that in a case where the filing of the translated copy has been dispensed with by the Judge the said document cannot be included in the list of documents to be filed by the parties who rely upon it in the appeal filed under Chapter A of the Representation of the People Act unless a translated copy as authenticated in the manner referred to above is supplied.

21. Subject to the provisions of the Act and these rules, the provisions of Code Civil Procedure, so far as may be applicable, will apply to the proceedings arising under the Act. The rules regarding applications and affidavits in Chapter IV Part II of the Orissa High Court Rules Vol. I shall apply mutatis mutandis to the applications under this Chapter.

22. On application made by any party, the Judge may allow uncertified carbon ies of the evidence being given to the applicant or his counsel on his paying for the ne at the rate of Re. 1 per page. Such copies shall be issued only after the Judge signed the original record and corrections, if any, have been carried out in the copies.

23. The election petitions, shall be treated as Class I records for purposes of classification and preservation and rules 1 to 5 of Chapter II, Part III of the General s and Circular Orders Civil, Vol. I shall, as far as may be, apply to such petitions.]

**FORM-A**

**IN THE HIGH COURT OF ORISSA, CUTTACK**

**Sammons to Respondent for written statement and settlement of issues**

**Election petition No.....of 20**

.....Petitioner

Versus

.....Respondent

To

Shri/Srimati.....

Whereas Shri/Shrimati.....  
instituted an election petition against you, you are hereby required to appear in this court in person or by an Advocate, duly instructed and able to answer all material questions relating to the petition, on the..... day of..... 20 at 10,O Clock in the forenoon to answer the petition and to produce on that day:-

(a) all the documents in your possession or power on which you intend to rely in support of your defence and

(b) a list of other documents on which you rely and which are not in your possession or power.

Take notice that if you do not appear in this court and file written statement service on the Advocate for the petitioner a copy of the written statement and enclosures, the petition will be heard and disposed of in your absence.

A copy of the petition and of its annexures is enclosed. Given under my hand and the seal of the Court, this .....day of.....20.

By order of the High Court

Deputy Registrar

**FROM B**

**IN THE HIGH COURT OF ORISSA, CUTTACK.**

Summons to witness for written statement and settlement issues

Election Petition No.....of 20

.....Petition

Versus

.....Respond

To

Shri/Shrimati.....

Whereas your attendance is required to.....on behalf of the...  
...petitioner/Respondent in above noted petition, you are hereby required personally to appear  
before this Court on the day of.....20..... at 10'O Clock in the forenoon and to bring with  
you (or send to the Court).

.....  
.....  
.....

Sum of Rs..... being your travelling and other expenses and subsistence allowance for  
one day, has been deposited by the petitioner/Respondent in this Court and will be paid to  
you after you have attended the Court on the aforesaid day. If you fail to comply with this  
order without lawful excuse, you will be subject to the consequence of non-attendance as  
laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

Given under my hand and the seal of the Court, this.....day of.....20...

By order of the High Court

Deputy Registrar.



## CHAPTER XXXIV

### Rules to regulate Appeals under the Copy Right Act (Act XIV of 1957)

1. Every memorandum of appeal from a final decision or order of the Copy Right Board shall be presented to the Registrar accompanied by a certified copy of the final decision or order appealed from.

2. Such appeal shall be drawn up in the manner prescribed Order 41 Rule 1 of the Code of Civil Procedure.

3. The appeal shall be stamped under the Court Fees Act, 1870 (VII of 1870) as amended from time to time in its application to the State of Orissa.

4. The appeal shall be heard by a Bench of two Judges and, then no such Bench is sitting, by any other Bench as ordered by the chief Justice.

Provided that, during the vacation, the appeal may be heard by a Single Judge, but no final order shall be passed by him.

5. In order to enable the Court to issue notice of appeal the appellant shall file in the Court necessary process fees as required under Rule 2 of Part IV, Chapter XVII.

6. Upon the filing of the memorandum of appeal the Deputy Registrar shall request the Registrar of the Copy Right Board to transmit to the Court the records of the connected case. Where the record consists of any entry in a register, kept by the Registrar of Copy Right Board and such other records as cannot be conveniently spared by the Registrar of the Copy Rights or the Board, only certified copies shall be transmitted.

7. As soon as the records are received in the Court, the Deputy Registrar shall give notice to the appellant or his advocate in respect of the records:

8. The paper-book shall consist of the following documents:-

(i) Petition or application before the Board,

(i) Written Statement, Objection or reply of the party, as the case may be,

(iii) Depositions of witnesses, if any.

(iv) Copies of documents exhibited before the Board.

(v) Copies of any documents rejected by the Board while its rejection is a ground of appeal or cross-objection.

(vi) Copy of the final decision or order of the Copy Right Board.

(vii) Such other document or documents as the Registrar of the Court may direct to be included in the paper-book.

9. There shall ordinarily be prepared six copies of typed paper-books at the cost of the appellant. One of such paper-book by supplied to the appellant or his advocate and another to the appearing respondents.

10. Taxation of costs shall be in the discretion of the Court.

11. The Court may during the pendency of the appeal direct, for sufficient reasons, that may proceeding in pursuance of the order appealed from shall remain stayed on such terms as it thinks fit.

12. The rules in the other Chapters regarding civil appeals (of the Court's Rules), in so far as they are not inconsistent with or repugnant to the aforesaid rules or the provisions of the Copy Right Act, 1957 (Act XIV of 1957), shall be applicable to these appeals.

## <sup>7</sup>[CHAPTER XXXIV-A

### **Rules under the Patents Act, 1970 (Act 39 of 1970)**

1. In these rules-

(a) The "Act" means the Patents Act, 1970

(b) The "Controller" means the Controller of Patents, referred to in section 73 of the Act.

(c) The "Court" means the Court presided over by the Judge nominated by the Chief Justice.

2. Petitions under section 64 and applications under section 71 of the Act shall be described as Patent Case No.....of 20 and references under section 103 of the Act shall be prescribed as Patents Reference No.....of 20. Similarly, appeals under section 116 of the Act shall be described as Patents Appeal No.....of 20 .

3. The cause titles of the applications, references and appeals shall state fully the names, places of residence and/or the places of business of the parties to the said proceedings.

4. All applications to be made to the Court under any provision of the Act including petitions under section 64 and applications under section 71, references under section 103 of the Act and appeals under section 116 of the Act shall be instituted in the matter of the particular number of the patent to which they relate and in the matter of the particular order of the Controller specifying the date of the order concerned.

5. In all applications, references and appeals the party instituting the same shall make the controller a party respondent addition to all other persons who appeared before the Controller or who were served with the notices of the proceedings before him;

---

<sup>7</sup> Inserted vide C.S. No.07, dtd.13.08.1979

Provided that if any person, without being served with any notice gave notice of an objection before the Controller, but did not subsequently take part in the proceedings, it will not be necessary make such a person a respondent.

6. All references of disputes to the Court under section 103 of the Act may, if the Court thinks fit, be tried on evidence. The Court may, at the time of giving such directions or from time to time thereafter, give such further or other directions including direction for discovery inspection, production of documents, for filing affidavit in answer or reply and for all other matters as may be necessary for the hearing of the references and for the trial of any question arising therefrom. The Court may direct service of notice of the reference upon any person and in such manner as the Court thinks fit. The Court may fix the date of hearing of the reference and the Court may adjourn the hearing from time to time.

7. In all suits under the Act or referred to in the Act the procedure of the High Court in relation to election petitions shall (unless otherwise expressly provided by the Act) be applicable.

8. All appeals under section 116 of the Act shall be heard a disposed of by the Court. Such appeal shall be in the form a petition duly signed and verified and the petition shall state the relevant facts, grounds of appeal and the reliefs sought and unless the Court otherwise directs, shall be accompanied by a certified copy the order appealed from. The Court may in its discretion allow t petition of appeal to be filed without the certified copy of such order subject to the certified copy being filed within such time as may be directed by the Court and on such terms as the Court thinks fit.

The Court may, if it thinks fit, direct at any stage of the proceeding that the appeal be referred to a Bench of this Court and the Court may for the aforesaid purpose report to that effect to the Chief Justice and the Chief Justice will constitute a Bench for determining the said appeal.

9. The petition of appeal shall be presented to the Registrar, for admission but if the party preferring the appeal wants to file appeal without the certified copy of the order appealed from, in that case the petition of appeal may be presented to the Court for an order under the above rule 8.

If the petition of appeal be not presented within three months from the date of the decision, order or direction of the Controller (as the case may be), in that case the Registrar shall endorse thereon the date of its presentation and return it to the party by whom it was tendered. Such petition of appeal may then be presented to the Court for admission. The Court may in appropriate cases extend the time for presenting, the appeal by a further period of exceeding two months from the date of expiry of the said period of three months from the date of the decision, order or direction of the Controller, as the case may be.

10. Application for admission of petition of appeal rejected by the Registrar shall be made to the Court at the earliest opportunities. The Court may on hearing of the application admit or reject the same with or without notice to the respondent. When it is admitted without

notice to the respondent, such admission shall not be a bar to any objection that may be taken at the hearing of the appeal in respect of its admissibility.

11. Within a week from the date of admission of the petition of appeal or within such further time as may be allowed by the Registrar the appellant shall take out and deliver to the Deputy Registrar a notice of appeal in the form set out in the Appendix hereto for service on the respondent. In default the appeal will be set down before the Court for dismissal.

12. Within a fortnight after the respondent has entered appearance in pursuance of the notice of appeal served on him, or in case no appearance has been entered, after the affidavit of service of the notice of appeal on the respondent is filed by the appellant, the Deputy Registrar shall set down the appeal in the list of the Court for direction upon seven clear days' notice to the appellant, the Controller and the appearing respondents.

13. When the appeal comes up for direction and from time to time thereafter, the Court may give such directions, for discovery inspection, production of documents, for filing of affidavits in answer or reply and for such other matters as may be necessary for the hearing of the appeal and for the trial of any question arising therefrom. The Court may direct service of notice of appeal upon any person in such manner as the Court thinks fit. The Court may fix a date of hearing of the appeal and may adjourn the hearing from time to time.

14. The appellant shall state in the petition of appeal the amount of value of the appeal which will be subject to revision by the Court.

15. Copies of all orders required to be transmitted to the Controller in terms of the provisions contained in sections 58 and 151 of the Act will be so transmitted by the Registrar, to the Controller within a fortnight from the date of completion of the said orders, unless otherwise ordered.

16. In any suit for infringement of any patent or in any other proceeding before the Court under the Act, an application by any of the parties may be made to the Court under section 115 of the Act for appointment of an independent scientific adviser to assist the Court, or to enquire and report upon any such question of fact or of opinion (not involving a question of interpretation of law), as the Court may formulate for the purpose. The application, unless otherwise directed by the Court, shall be made by way of a petition on seven clear days' notice to the other side. The application shall state (a) the necessity of having such an adviser and (b) the points on which the said adviser's assistance is required. The Court may appoint such an adviser also on its own motion.

For that purpose of these rules "scientific adviser" includes persons with scientific qualification, medical practitioners, engineers, architects, surveyors, accountants, actuaries and any other specially skilled persons whose opinion in relation to any matter before the Court may be of assistance to the Court.

17. Upon such an application or appointment of an independent scientific adviser being made, the applicant may be required by the Court to submit a list of scientific advisers willing to act and specially qualified for the purpose, stating their full names, their

qualifications, their occupation and the remuneration likely to be charged by them per day or part thereof. The other party shall have the right, and may be required by the Court, to state the objections, if any, and the grounds of such objections to the appointment of any scientific adviser out of such list, in addition to their objection, if any, as to the necessity of appointment of the scientific adviser.

18. The Court may, if it is satisfied that a scientific adviser should be appointed, select and appoint a scientific adviser out of such list or in a proper case select and appoint any other scientific adviser outside such list, if it thinks fit to do so, and may determine such remuneration for the said adviser as it considers proper. Such remuneration shall include the costs of making a report and the proper daily fee for any day on which the said adviser may be required to attend the Court.

19. When the Court takes the aid of a scientific adviser, it may require the said adviser to state his views in writing, signed by him, on such specific points as it may formulate. The view expressed by the scientific adviser shall form a part of the records of the proceeding.

20. The Court may of its own motion or at the request of any party against whom the scientific adviser may express his views require the scientific adviser to appear in Court to give evidence and the party will have the right to examine the scientific adviser and to cross-examine him with regard to the views expressed by him. In the matter of examination of the scientific adviser the Court may give such directions as it may think necessary and if the scientific adviser considers it necessary to perform any experiments or tests the Court may give appropriate direction. The Court may also give appropriate directions with regard to costs that may be incurred for such purpose.

21. Appeal, if any, from any order of the Court in any proceeding under this Act, shall be heard by a Division Bench constituted by the Chief Justice.

22. Costs of all proceedings before the Court will be in the discretion of the Court and shall be paid by such party or parties as the Court may direct, Unless otherwise ordered, the costs of applications under the Act shall be taxed in the same manner as the costs of a Civil Revision, Costs of an appeal or a reference, unless otherwise ordered, shall be taxed and allowed as of a First Appeal.

23. Save as otherwise provided by the Act or by these rules, the practice and procedure of the Court and the provisions of the Code of Civil Procedure, so far as applicable, shall apply *mutatis mutandis* to all proceedings under the Act.

24. The Court may, in any case in which it shall deem fit, extend or abridge the time appointed by these rules or fixed by an order of the Court for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

25. Nothing in these rules shall be deemed to limit or otherwise effect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

26. Any proceeding taken under the Act in this Court before the commencement of these rules will be continued under these rules which will be made applicable.

27. Process fee to be paid shall be the same as provided in Rule 2, Chapter XVII, Part IV of the Orissa High Court Rules, 1948 (Volume I).

APPENDIX

FORM OF NOTICE OF APPEAL UNDER RULE 11

In the High Court of Judicature, Orissa Cuttack

Patents Appeal No.....of 20

In the matter of.. ..

An appeal under section 116 of the Patents Act, 1970;

And

In the matter of Patent No.

And

In the matter of the Order of the Controller of Patents,

dated the.....day of.....20

In case No.....of 20

made under section.....of the said Act

.....Appellant

Vs.

..... Respondent/Respondents

To

Take notice that an Appeal has been presented by the Appellant to the High Court of Orissa from the order of the Controller of Patents mentioned above and that such Appeal will be heard by the Judge taking appeals under the Patents Act, 1970;

An appearance should be entered by you in the office of the Registrar of this Court within ten days from the date of service of this notice, exclusive of the day of such service. If no appearance is so entered on your behalf or by someone by law authorised to act for you, the appeal will be liable to be heard and decided in your absence.

High Court of Orissa

By order of the Court

Dated....

Deputy Registrar

N. B.: -The notice is returnable within seven weeks from the date of the notice.

By order of the Court Deputy Registrar]

**<sup>8</sup>[CHAPTER XXXIV-B****1. Short Title and Commencement : -**

- (a) These Rules may be called The Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020.
- (b) They shall come into force on the date of their publication in Odisha Gazette.

**2. Definitions:**

- (1) In the construction of these Rules, the following terms shall have the respective meanings hereinafter assigned to them:
  - (a) 'Act' means The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.
  - (b) 'Action *in Personam*' or 'Suit *in Personam*' means Admiralty Action *in Personam*.
  - (c) 'Action *in Rem*' or 'Suit *in Rem*' means Admiralty Action *in Rem*.
  - (d) 'The Court' means the High Court of Orissa.
  - (e) 'Electronic Track Data' means Digital or Electronic Recording of the track of the vessel including any associated visual recording or shore based automatic identification system, electronic chart and display information system or a voyage data recorder.
  - (f) 'Judge' means Judge of the High Court of Orissa.
  - (g) 'Marshal' means the Marshall or his substitute or other Officer who may be appointed by the Chief Justice to execute the process of the Court in exercise of its Admiralty jurisdiction.
  - (h) 'Registrar' means Registrar (Judicial) of the Court or any other Officer authorized to perform the duties of such Registrar by the Chief Justice.
  - (i) 'Registry' means the Office of the Registrar.
  - (j) 'Suit' means any suit, action or other proceedings instituted in the Court in its Admiralty Jurisdiction.
  - (k) 'Affidavit', in addition to its ordinary meaning, includes a statement in writing made by a person either on a solemn affirmation or by way of an oath.
- (2) The words and expressions used herein but not defined and defined in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall have the same meanings assigned to them in those Acts.

---

<sup>8</sup> Substituted vide Gazette Notification No. 1091 Dtd.28.08.2020



**3. Institution of the suit:** - A suit shall be instituted by a plaint drawn-up, subscribed and verified according to the provisions of the Code of Civil Procedure, 1908 as amended from time to time. Save that if the suit is *in rem*, the defendant may (subject to such variations as the circumstances may require) be described as "the owners and parties interested" in the vessel or other properties proceeded against instead of by name.

A plaint shall be presented to the Registrar, either in person duly identified by an Advocate or through an Advocate in whose favour the plaintiff has executed a Vakalatnama.

**4. Admiralty Suit Register:** All suits filed in the admiralty jurisdiction of the Court, whether *in rem* or *in personam*, shall be entered in a book to be kept in the Registry called "Admiralty Suit Register" in which the number of the suit and the names of the parties will be entered including the name of the ship or its sale proceeds.

**5. Arrest warrant after filing affidavit:** - In a suit *in rem*, a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the suit has been instituted, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed. The affidavit shall comply with the following provisions and shall state:

(a) (i) the name and description of the party at whose, instance the warrant is to be issued, the nature of the claim of counter-claim, and that the claim or counter claim has not been satisfied.

(ii) the name of the person who is liable for the maritime claim.

(iii) the name, nature and the national character of the property to be arrested and the name of the owner thereof.

(b) In a suit of wages or of possession, the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the suit has been sent by registered post/speed post to the nearest consul or diplomatic representative in India of the State to which the vessel belongs and a copy of the notice shall be annexed to the affidavit.

(c) In a suit of bottomry, the bottomry, the bottomry bond, and if it is in a foreign language, along with a translation thereof, shall be produced for the inspection and

perusal of the Registrar and a copy of the bond or of the translation thereof certified to be corrected shall be annexed to the affidavit.

(d) In a suit for distribution of salvage, the affidavit shall state the amount of salvage money awarded or agreed to be accepted and the name, address and description of the party, holding the same.

**6. Warrant may be issued before affidavit by leave:** - The Court may in its discretion allow the warrant to issue, although the affidavit in Rule 5 mentioned may not contain all the required particulars and the Court may also waive, in a suit of wages, the requirement as to service of the notice, and in a suit of bottomry, the production of the bond.

**7. Warrant may be issued ex-parte:-**The application to arrest property may be allowed ex-parte, unless the Court otherwise directs.

**8. Suits *in rem* when service not required:-** In suits *in rem*, no service of writ of summons or warrant shall be required when the defendant or his Advocate waives service and undertakes in writing to appear and to give security or to pay money into Court in lieu of security.

**9. Non-appearance of defendant in a suit *in rem* and the consequences thereof:** The defendant and his Advocate not entering appearance or giving security or paying money into the Court in lieu of security in a suit *in rem*, in pursuance of his written undertaking so to do shall render the ship liable to attachment.

**10. Service of Process in a suit *in personam*:**

(a) In the case of a suit *in personam* or in a suit where any of the defendants is sued *in personam*, service of summons on such defendant would be in accordance with the prevailing rules and practice.

(b) In the case of any defendant sued *in personam*, service of summons and process out of the territorial jurisdiction of the Court or out of India is permissible only with leave of the Court, if,

(i) The defendant at the time of commencement of action by the Court is ordinarily a resident or has a place of business within the territorial jurisdiction of the Court, or;

- (ii) Part of the cause of action arose within the territorial limits of the Court, or ;
- (iii) The defendant has submitted or agreed to submit or acquiesced to the jurisdiction of the Court.

**11. Service by whom made:** - Every writ, warrant and process shall be served by the Marshal or his substitute. Every warrant shall be returned to the Registrar within seven days from the date thereof.

**12. Service how effected:** - In suits *in rem*, service of summons or warrant against ship, freight or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the main mast or on the single mast of the vessel or on any conspicuous part of the vessel and by taking off the process, leaving a true copy of it nailed or affixed in its place.

**13. Service how effected on cargo landed:** - If the cargo has been landed or transhipped, service of the writ or warrant to arrest the cargo and freight shall be effected by placing the writ of summons or warrant for a short time in the cargo and on taking off the process by leaving a true copy upon it.

**14. Service on cargo in custody of third party:** - If the cargo is in the custody of a person who does not permit access to it, service of the writ or warrant may be made upon the custodian.

**15. Marshal may apply for direction:** - The Marshal may at any time make a report to Court and apply for directions with respect to property under arrest in a suit. The Court may direct notice of the application to be given to any person concerned with the property before passing orders on the report.

**16. Application for sale of arrested property:** - In a suit *in rem*, if the property proceeded against has been arrested, the plaintiff may, at any time after service of the writ of summons upon the defendant or after the defendant's appearance, whichever is earlier, apply to the Court by notice of Motion for an order that the arrested property be sold by the Marshal and the sale proceeds be paid into the Registry. The Court may make such order on the claim as it thinks fit.

**17. Interveners: - (1)** Where property against which a suit *in rem* is brought, is under arrest or money representing the proceeds of sale of that property is in Court, a person who has interest in that property or money but who is not a defendant to the suit may, with the leave of the Court, intervene in the suit.

(2) An application for the grant of leave under this rule may be considered ex-parte provided it is duly supported by affidavit showing the interest of the applicant in the property against which the suit is brought or in the money in the Court.

(3) A person to whom leave is granted to intervene in a suit shall either appear in person or shall file a Vakalatnama therein within the period specified in the order granting leave. On filing such appearance or Vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(4) The Court may order that a person to whom it grants leave to intervene in a suit shall, within such period as may be specified in the order serve on every other party to the suit such pleading as may be specified.

**18. Suits *in rem* by default: -** After the expiration of 15 days from the date of warrant, if no appearance shall have been entered in the suit the Advocate for plaintiff may cause the suit to be set down for hearing.

**19. If the Court finds plaintiff's claim is well founded: -** If, when the suit comes before the Court, it is satisfied that the plaintiff's claim is well founded, it may pass a decree in favour of the plaintiff and may order the property proceeded against to be sold with or without previous notice and the sale proceeds paid into the Registry to the credit of the suit or make such other order in the premises as it may think just.

**20. Order for sale of property and determination of priority of claims: - (1)** Where in a suit *in rem*, the Court has ordered the property proceeded against to be sold, any party who has obtained or obtains a decree or order against the said property or the proceeds of sale thereof may apply to the Court by Notice of Motion for an order determining the order of priority of the claims against the proceeds of sale of the said property-

(a) in a case where the order for sale contains the further order referred to in Sub-rule (2) after the expiration of the period specified in the order under Sub-rule (2) (a); or

(b) in any other case, after obtaining judgment.

(2) Where in a suit *in rem*, the Court orders the property proceeded against to be sold, it may further order-

(a) that the order of priority of the claims against the proceeds of sale of the property shall not be determined until after the expiration of ninety days or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid in Court;

(b) that any party to the suit or to any other suit *in rem*, against the property proceeded against or the sale proceeds thereof may apply to the Court to extend the period specified in the order;

(c) that within seven days after the date of payment into Court of the proceeds of sale, the Marshal shall send for publication in such newspapers as the Court may direct a notice complying with the provisions of Sub-rule (3).

(3) The notice referred to in Sub-rule (2) shall state:

(a) that the property (particulars to be specified) has been sold by the order of the High Court in a suit *in rem* giving the number of the suit and the names of the parties to the suit ;

(b) that the gross proceeds of the sale specifying the amount thereof, have been paid into Court;

(c) that the order of priority of the claims against the, said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale ;

(d) that any person having a claim against the property or the proceeds of sale thereof, shall apply to the Court for leave to intervene and prove his claim before the Court and obtain a decree before the expiration of that period.

(4) The Marshal shall lodge in the Registry a copy of each newspaper in which the notice referred to in Sub-rule (2) has appeared.

(5) The expenses incurred by the Marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the property.

(6) An application to extend the period referred to in Sub-rule (2) (a), shall be made by Notice of Motion which shall be served on the parties to the suit and all persons who have obtained leave, to intervene in the suit.

(7) Subject to the aforesaid provisions in this rule, every sale under the decree or order of the Court shall unless the Court shall otherwise order be made by the Marshal in like manner as a sale of movable property in execution of decree in an ordinary civil suit.

**21. Procedure by Marshal on sale of property: -** (1) The Marshal shall pay into the Court the gross proceeds of sale of any property sold by him and shall at the same time, bring into the Registry the account of sale, with voucher in support thereof, for the taxation of costs and expenses of sale.

(2) Any person interested in the proceeds may be heard before the Registrar on the taxation of the account of expenses and the Registrar's order thereon shall be final.

**22. Payment of money: -** All money paid into Court shall be paid to the Registrar.

**23. Payment out of Court: -** Money paid into Court shall not be paid out of Court except in pursuance of an order of the Court.

**24. Security for latent demands: -** Security for latent demands shall not, unless the Court shall otherwise order, be required on the payment of money out of Court.

**25. Security: -(1)** Where security is to be given in the Registry, it shall be given according to the rules and practice of the Court as to security in the case of, an attachment before judgment in an ordinary civil suit. If the claim in the suit is in foreign currency, the security shall be furnished in that currency subject to orders of the Court.

(2) Where security is tendered in cash, the Registry shall invest the same in an interest bearing account with the branch of a nationalized or scheduled bank within

the jurisdiction of the Court on its Original Side subject to any other orders of the Court.

**26. Motions and applications:** - Motions and applications may be made into the Court to the Bench to which admiralty matters have been assigned under Rule 48 and in its absence, to the Chief Justice.

**27. Entry of appearance:** - An Advocate desiring to enter an appearance in any suit shall file in the Registry a praecipe, a copy of which shall have been previously served on the Advocate for the adverse party.

**28. Contents of the praecipe:-** The praecipe referred to in Sub-rule 27 shall contain the name of the Advocate and an address in Cuttack at which it shall be sufficient to leave all instruments and documents in the suit.

**29. Release:** - Property arrested by warrant shall only be released under the authority of an instrument issued by the Registrar to be called a "Release".

**30. Caveat against arrest of property:** - (1) Any person desiring to prevent the arrest of any property shall file in the Registry a praecipe, signed by himself or his Advocate, who may be acting for him requesting that a caveat be entered against the arrest of the said property and undertaking to enter an appearance in person or by a Vakalatnama in any suit that may be instituted against the said property and to give security in such suit in a sum not exceeding the amount to be stated in the praecipe or to pay such sum into the Registry. The caveat shall contain the name, address and e-mail address of the caveator and/or his advocate, as the case may be. A caveat against the issue of a warrant for the arrest of the said property shall thereupon be entered in a book to be kept in the Registry, called the "Caveat Warrant Book". The Caveat Warrant Book shall state the amount of security that the caveator has undertaken to provide as per praecipe.

(2) Copy of plaint in suit against property to be served before filing plaint on the caveator-Any person instituting a suit against any property in respect of which a caveat has been entered in the "Caveat Warrant Book" shall, before filing the plaint, serve a copy thereof upon the party on whose behalf the caveat has been entered or upon his Advocate and annex to the plaint a statement of such service.

(3) Caveator to give security on filing of plaint-Within three days from the filing of the plaint, the party on whose behalf the caveat has been entered shall, if the sum in which the suit has been instituted does not exceed the amount for which he has given the undertaking, give security in such sum or pay the same into the Registry, or if exceeds that amount, give security to the sum in which the suit has been instituted or pay the same into the Registry.

(4) On default, the suit may proceed ex parte-After the expiration of three days from the filing of the plaint, if the party on whose behalf "a caveat has been entered shall not have given security in such sum or paid the same into the Registry, the plaintiff may apply to the Registrar to set down the suit forthwith for hearing as an undefended, suit;

Provided that the Court may on good cause shown and on such terms as to payment of costs as it may impose, extend the time for giving security or paying the money into the Registry.

(5) Judgment on the claim and enforcement of Judgment on the claim payment-When the suit comes before the Court, if the Court is satisfied that the claim is well founded it may pronounce Judgment for the amount which appears to be due, and may enforce the payment thereof by order of attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property if it then be or thereafter comes within the jurisdiction of the Court.

(6) Registrar to search for caveat before issue of warrant-Before issuing a warrant for the arrest of property, the Registrar shall ascertain, whether or not any caveat has been entered against the issue of warrant of arrest thereof.

**31. Caveat against release of arrested property:** - Any person desiring to prevent the release of any property under arrest shall file, in the Registry a praecipe, signed by himself or his Advocate, who may be acting for him requesting that a caveat be entered against the release of the said property which shall thereupon be entered in a book to be kept in the Registry called the "Caveat Release Book". The caveat shall contain the name, address and e-mail address of the caveator and/or his advocate, as the case may be, and the nature and amount of the claim of the caveator. Such detail shall be entered in "Caveat Release Book".



**32. Property not to be released unless notice is given to caveator:** - No property arrested under a warrant shall be ordered to be released, unless notice is given to the person who has filed caveat against release thereof and whose caveat is outstanding on the "Caveat Release Book".

**33. Penalty for delaying release:** - A party delaying the release of any property by the entry of caveat shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the Court, good and sufficient reason for having entered the caveat.

**34. Caveat against payment out of sale proceeds of property:** - Any person desiring to prevent the payment out of Court of any money in Court representing the proceeds of sale of any property shall file in the Registry a praecipe, signed by himself or his Advocate who may be acting for him, requesting that a caveat be entered against payment out of Court of the said proceeds of sale. A caveat against the payment out of Court of such sale proceeds shall thereupon be entered in a book to be kept in the Registry called the "Caveat Payment Book." The caveat shall contain the amount, nature and details of the claim of the caveator and details of any suit or proceedings in respect thereof. Such details shall be entered in "Caveat Payment Book".

**35. Duration of caveat:** - A caveat, whether against the issue of a warrant, the release of property, or the payment of money, out of the Registry shall be valid for six months from the date of its filing.

The period of validity of a caveat shall not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

**36. Withdrawal of caveat:** - A caveat may be withdrawn by the party on whose behalf it has been entered or by his Advocate; but the praecipe to lead withdrawal thereof shall, save by permission of the Registrar, be signed, by the person who signed the praecipe to lead the entry of the caveat.

**37. Application to overrule a caveat:** - A caveat may be overruled on an application made to the Court duly supported by an affidavit.

**38. Release of property arrested:** - Subject to the provisions of Rules 32 and 42 property arrested under a warrant may be ordered to be released-

(1) at the request of the plaintiff by a praecipe, before an appearance in person or by Vakalatnama is filed by the defendant; or

(2) on the defendant paying into Court the amount claimed in the suit; or

(3) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or

(4) on any other ground that the Court may deem just.

**39. Release by Marshal on lodging praecipes with release:** - The release when obtained shall be lodged with praecipe in the office of the Marshal by the party obtaining the same who shall also at the same time pay all the costs, charges and expenses attending the care and custody of the property while under arrest. The Marshal shall thereupon release the property.

**40. Property may be arrested notwithstanding caveat:-** The fact that there is a caveat against arrest in force shall not prevent a party from setting a warrant of arrest issued and the property, to which the caveat relates arrested.

**41. Remedy where property protected by caveat is arrested without good and sufficient cause:** - Where property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest the party at whose instance the caveat was entered may apply to the Court by Notice of Motion for an order for release of the property. The Court, unless it is satisfied that the party procuring the arrest of the property had good and sufficient reason for doing so, may order the release of the property and may also order the last mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

**42. Value of property under arrest in salvage suit to be determined before release:** - In a suit of salvage, the value of the property under arrest shall be agreed to or proved by affidavit to the satisfaction of the Court before the property is released.

**43. Rules as to Collision claims:** -

- (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between vessels, the following Rules shall apply unless the Court otherwise orders.
- (2) If in a collision claim *in rem*, a cross claim *in rem* arising out of the same collision or occurrence is made and the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and the party bringing the cross claim is unable to arrest a ship or otherwise obtain security, the party bringing the cross claim may apply to the Court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favor of that party.
- (3) The plaintiff must within two months after service of the writ or any defendant, and the defendant must within two months after entering an appearance, file in the Registry a statement of the following:
  - (a) the names of the ships which came into collision, their national character and their ports of registry; the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
  - (b) the date and time (including the time zone) of the collision;
  - (c) the place of the collision;
  - (d) the direction and force of the wind;
  - (e) the state of the weather;
  - (f) the state, direction and force of the tidal or other current;
  - (g) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
  - (h) the lights or shapes (if any) carried by the ship;
  - (i) (i) the distance and bearing of the other ship if and when her echo was first observed by the radar;  
(ii) the distance, bearing and approximate heading of the other ship when first seen;

- (j) What light or shape or combination of lights or shapes (if any) of the other ship was first seen;
  - (k) What other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
  - (l) What alteration (if any) were made to the course and speed of the ship after the earlier of the two times referred to in subparagraph (g) up to the time of the collision, and when, and what measures (if any) other than alternations of course or speed, were taken to avoid the collision, and when;
  - (m) The heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
  - (n) What sound signals (if any) were given, and when; and
  - (o) What sound signals (if any) were heard from the other ship, and when;
  - (p) Disclose any electronic track data which is or has been in its control and, where every party has electronic track data in its control, each must provide copies, or permit inspection, of that electronic track data within 7 days of a request by another party to do so.
- (4) Nothing contained in this rule shall apply to suits *in personam*.

**44. Praecipes, writs of summons, warrants, etc.** - Forms of praecipes required to be filed in the Registry or Marshal's Office and forms of writs of summons and warrants may be obtained on applications in the Registry. They shall as nearly as may be in the forms set forth in the Appendix to these Rules and may be varied or altered by a Court in its discretion.

**45. Signature to Praecipe:** - Every praecipe shall be signed either by the party or by his Advocate.

**46. Improperly filled up praecipe:** - If the praecipe is not properly filled up, the Registrar or the Marshal, as the case may be, may refuse to receive the same or to act thereon.

**47. Practice and Procedure:** The ordinary rules and practice with regard to any suit/proceeding before the Court shall apply so far as may be necessary, if not inconsistent or repugnant with this Rule. Notwithstanding anything contained in this special rule, the Bench hearing the case, may, if it thinks fit, make such order, as it may make under the ordinary rules and practice except in case of special summary procedure cases .

**48. Admiralty Bench:** Admiralty jurisdiction of the Court may be exercised by a Single Judge Bench, as the Chief Justice may appoint, designated as Admiralty Bench who shall hear and dispose of the same and shall also deal with all interlocutory applications and motions in connection therewith.

Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from any judgment, decree or final order or interim order of such Single Judge Bench to a Division Bench of the Court, as the Chief Justice may appoint, other than the Judge from whose judgment, decree or final order or interim order, the appeal is preferred. If there arise any difference of opinion between the Judges of the Division Bench, then the same shall be subject to Rule 5 of Chapter III of the Rules of the High Court of Orissa, 1948.

**49. Fees:** - The fees of the Courts in respect of claims under the Act shall be those as set out in Section 7 read with Schedule I of the Court-fees Act, 1870, as amended from time to time and the fees of Advocates shall be at the rates obtained under the original jurisdiction of the Court relating to writ application. The fees to be taken by the Marshal shall be those set forth in the Schedule hereto.

#### **Assessor in suits of Salvage, Towage or Collision**

**50. List of Assessors:** The Court may, if think fit, and shall upon request of either party to the suit, summon for its assistance, in such manner as it may direct, one or more competent assessors from the list of assessors who shall attend and assist the Court in hearing any suit or cause relating to salvage, towage, or collision.

**51. Appointment of Assessors:** The appointment of the assessors shall be made by the Court having regard to the nature of the suit and the qualification and experience of the person so appointed. The appointment of assessor(s) shall not preclude any party/parties to examine any expert witness in any admiralty proceeding. However,

the Court shall exercise its discretion in such matter having regards to the nature of dispute and necessity of examination of such expert witness.

**52. Assessor's Fees:** Every person who shall so act as an assessor shall be entitled to a fee as determined by the Court for each day's attendance or a wholesome amount for the entire assistance in such case.

**53. Application to summon assessors:** - Either party in any such suit as aforesaid may apply that it may be heard with the assistance of the assessors. Unless otherwise ordered, the application shall be made by summons. Where the suit is pending before the Court, to the Bench before whom it is appointed that the suit shall be heard.

**54. Letter in the nature of summons to be served as process:** - Where assessors are to be summoned, this shall be done by a letter, under the signature of the Registrar which may be served in like manner as process of the Court in its writ jurisdiction.

**55. Assessor's fees by whom to be deposited:** - Assessor's fee shall, before each day's hearing, be deposited with the Registrar by the party at whose instance they were summoned, or in default thereof by the other party.

**56. How to be disposed of:** - The Registrar shall pay the fees so deposited with him to 'assessors' or, in any case where their attendance is not required, shall; unless otherwise ordered, refund the same so the party by whom the same was deposited.

**57. To be deemed costs in the cause:** - Unless otherwise ordered, all fees paid to assessors under these rules shall be deemed to be costs in the suit.

### **Special Summary Procedure**

**58. Summary Procedure by consent:** - The parties to any suit may have the same dealt with, heard and determined in accordance with the following special rules upon filing in the Registry, a consent signed by the parties or their Advocates in the form given in the Appendix to these Rules.

**59. Application to fix hearing and give directions:-** After such consent has been filed, application may be made to the Court by any party to appoint a day for hearing and to give directions.

**60. No pleadings:** - There shall be no pleadings beyond a statement of claim verified by affidavit, but if there be a counter-claim, notice thereof shall be given in writing before such consent as aforesaid is signed.

**61. List of documents:** - inspection-List of documents shall be exchanged and mutual inspection of documents given at or before a time appointed by the Court on the hearing of the application aforesaid.

**62. Hearing of application:** - At the hearing of the application aforesaid unless it shall sufficiently appear from the statement of claim or otherwise in writing, the plaintiff shall specify the cause or causes of action in respect of which the suit is brought and if practicable, the amount actually claimed, and the defendant shall specify the grounds of defence on which he relied and in salvage claims, the plaintiff and the defendant respectively shall, at the time or within such time as the Court shall direct, state the values of their property and, if required, by affidavit. In the case of a counter-claim, the cause or causes of action and the claim therein and grounds of defence thereto shall be similarly stated.

**63. Evidence:** - The Court shall be at liberty to receive, call for, and act upon, such evidence, documentary or otherwise, whether legally admissible or not, as it may think fit.

**64. Costs:** - If in any suit, the sum awarded, or for which judgment is given, exceeds the sum, if any, tendered, the Court hearing be case may nevertheless exercise his discretion as to how and by whom the costs shall be borne.

**65. In other respects ordinary rules shall apply:** - In other respects, the ordinary rules and practice shall apply so far as may be necessary. Notwithstanding anything contained in this special rule, the Bench hearing the case may if it thinks fit, make such order as it may make under the ordinary rules and practice.

**66. Summary Procedure:**

- (1) If in an action *in rem*, summons has been served on a defendant and the defendant has given notice of intention to defend the action, the plaintiff may apply before the Court for judgment against the defendant on the ground that the defendant has no defence,-
  - (a) to the claim included in the plaint, or

- (b) to a part of such claims; or
  - (c) except as to the amount of any damage as claimed.
- (2) An application under sub rule (1) must be made by notice of motion or summons supported by an affidavit verifying the facts on which the claim or part of the claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be or no defence except to the amount of any damage as claimed.
  - (3) Unless the Court otherwise directs, an affidavit for the purpose of this rule may contain statement of information or belief and the sources and grounds thereof.
  - (4) The notice of motion, a copy of the affidavit in support thereof and of any exhibit referred therein must be served on the defendant not less than 10 clear days before the return date.
  - (5) Unless on the hearing of an application under sub rule (1) either the Court dismisses application or the defendant satisfies the Court with respect to the claim or part of a claim to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought to be some reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against the defendant on that claim or part as may be just in regard to the nature or remedy to be claimed.
  - (6) The Court may by order and subject to such conditions, if any, as may be just stay execution of any judgment given against the defendant under this rule until after the trial of a counter-claim made or raised by the defendant in the action.
  - (7) Defendant may show cause against an application under sub rule (1) by affidavit or otherwise to the satisfaction of the Court.
  - (8) The Court may give leave to defendant against whom such an application has been made leave to defend the action with respect to the claim or the part of a claim to which the application relates either unconditionally or on such terms as to give security or time or may on trial or otherwise as it thinks fit.
  - (9) On the hearing of such application, the Court may order a defendant showing cause or where the defendant is a vessel, the master or first officer,



owner or charterer or manager of the vessel and in the case of any other property, the owner or person having custody thereof.

- (10) To produce any document if it appears to the Court that there are special circumstances which make it desirable that he should do so to attend and be examined on oath.
- (11) Where a defendant to an action *in rem*, has served a counter-claim on the plaintiff then the defendant may contend on the ground that the plaintiff has no ground to defend the defence to the claim made in the counter-claim or to a particular part of such counter-claim and may apply to the Court for judgment against the plaintiff on that claim or part thereof.
- (12) The above rules with regard to the application filed by the plaintiff shall apply mutatis mutandis to the application filed by a defendant in support of its counter-claim.
- (13) The above rules would only apply to actions *in rem* and by or against a defendant sued *in rem*.

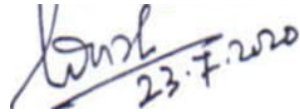
#### **Supersession of Rules**

**67. These rules to supersede previous rules:** - This Rule shall apply to the suits, actions, claims or appeals brought in the Court in the exercise of its admiralty jurisdiction in supersession of all former rules which may have been in force or deemed to have been in force including ‘The Admiralty Rules of the Orissa High Court, 1981’, which is/are hereby repealed. The existing Rule made by the Court referred to as Admiralty Rules of the Orissa High Court, 1981 is hereby repealed.

**SCHEDULE OF FEES AND CHARGES**

<b>Sl. NO.</b>	<b>Fees for or on</b>	<b>Rs.</b>
1.	Fees for serving each summons or notice to a defendant or a witness.	Rs. 500.00
2.	Fees for executing a warrant of arrest or order of arrest	Rs. 500.00
3.	Fees for serving any injunction, order or process not otherwise provided for	Rs.500.00
4.	Any other fees not provided specifically in the schedule	Rs. 200.00

**By Order of the High Court of Orissa**



**REGISTRAR (JUDICIAL)**

**Form No. I**

**[Rule 58]**

**Form of consent to the application of summary procedure**

**In the High Court of Orissa, Cuttack**

**(Admiralty Jurisdiction)**

Between :

... Plaintiff

and

... Defendant

We the undersigned respectively hereby agree that this cause shall be dealt with, heard and determined according to the Summary Procedure.

Dated this... ..... day of.....20.....

Plaintiff's Advocate

Defendant's Advocate

**Note** - As the above mentioned Rules depart from the ordinary rules and practice, it will be necessary for Advocates signing this consent to obtain their clients' authority to do so.

**Form No. 2**

**[Rules 9 and 47]**

**Writ of summons in Admiralty Suits *in rem***

Suit No..... of 20.....

In the High Court of Orissa, Cuttack

(Admiralty Jurisdictions)

Between :

... Plaintiff

and

... Defendant

To

The owners and parties interested in the Ship or Vessel of the port of (or cargo and freight, etc., as the case may be).

Greeting : *Where (enter the name, description and address of the plaintiff) has instituted a suit in his Court against you (set out concise statement as appearing in the plaint or attach*

*plaint*); You are hereby required to cause an appearance to be entered for you in the Registry (*i.e.*, the office of the Registrar of this Court) within .....days from the service upon you of this summons, exclusive of the day of such service; and are summoned to appear before this Court in person or by an Advocate duly instructed to answer the plaintiff's claim on the day the case is set down for hearing, upon which date you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case and you are hereby required to take notice that in default of your causing an appearance to be so entered the suit will be liable to be heard and determined in your absence; and if the property described In this writ is then under the arrest of the Court, it may be sold by the order of the Court.

Witness.....Chief Justice of the High Court of Orissa at Cuttack the..... day  
at.....in the year of one thousand nine hundred and...

Advocate..... Registrar.....

**Note 1-** An appearance in person or through Advocate is to be entered in the Registry, within the time limited in default thereof, the suit will be liable to be heard *ex parte*.

**Note 2-**The written statement called for must be filed along with your appearance or within such time as permitted by the Court. In default, the suit shall be liable to be heard *ex parte*.

**Note 3-**This writ must be returned to the High Court immediately after the service thereof, or, if not served and the time for the return thereof shall not have been extended to a next date.

**Note 4-** Should you apprehend your witnesses will not attend of their own accord you can have subpoenas from this Court to compel the attendance of any witness and the production of any document that you to have a right to call upon the witness to produce, on applying to the Court at any time before the trial, and on payment to them of the fees and expenses prescribed by the Rules of this Court.

**Note 5-** If you admit the demand, you should pay the money into Court with the costs of the suit to avoid sale of any property in respect of which the suit is brought or execution of the decree which may be against your person or property, or both.

**Form No. 3**

**[Rule 5]**

**Praecipe for warrant**

Suit No.....of 20.....

In the High Court of Orissa Cuttack

(Admiralty Jurisdiction)

Between :

... Plaintiff

and

... Defendant

I, ..... Advocate, for the (*state whether plaintiff or defendant*), pray a warrant to arrest (*state name and nature of property*).

Dated the.....day of.....20.....

Advocate  
(*To be signed by the Advocate*)

**Form No. 4**

**[Rule 5]**

**Warrant of Arrest in Admiralty**

*Suit in rem*

Suit No.....of.....20.....

In the High Court of Orissa Cuttack

(Admiralty Jurisdiction)

Between :

... Plaintiff

and

... Defendant

To the Marshal,  
We hereby command you to arrest the ship or vessel of the port of.....(and the cargo and freight, etc., as the case may be) and to keep the same under safe arrest, until you shall receive further orders from us.

Witness.....Chief Justice of the High Court of Orissa at Cuttack .....the day of..... 20.....

Registrar

**Form No. 5**

**[ Rule 10 ]**

**Writ of Summons in Admiralty action *in personam***

**In the High Court of Orissa, Cuttack**

(Admiralty Jurisdiction)

Between :

... Plaintiff

and

... Defendant

To  
(Address)

Greeting : Whereas (*enter the name and description and address of the plaintiff*) has instituted a suit in this Court against you (*as per the plaint or concise statement attached*), you are hereby required to cause an appearance to be entered for you in the Registry (*i.e.*, in the office of the Registrar of this Court) within .....days from the service upon you of the summons, exclusive of day of such service, and are summoned to appear before this Court in person or by an Advocate duly instructed to answer the plaintiff's claim on the day the case is set down for hearing, upon which day you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case, and you are hereby required to take notice that in default of your causing appearance to be so entered, the suit will be liable to be heard and determined in your absence.

Witness.....Chief Justice of the High Court of Orissa at Cuttack the ..... day  
of.....20.....

Registrar  
Advocate

**Note 1-** An appearance in person or through Advocate is to be entered in the Registry, within the time limited. In default thereof, the suit will be liable to be heard *ex parte*.

**Note 2-**The written statement called for must be filed within the time limited, the defendant having first entered an appearance. In default thereof the suit will be liable to be heard *ex parte*.

**Note 3-**This writ must be returned to the High Court immediately after the service thereof, or, if not served and the time for the return thereof shall not have been extended on the day of next.

**Note 4-**Should you apprehend your witnesses will not attend of their own accord you can have subpoenas from this Court to compel the attendance of any witness and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial and on payment to them of the fees and expenses prescribed by the Rules of this Court.

**Note 5-** If you admit the demand you should pay the money into Court with the costs of the suit to avoid sale of any property in respect of which the suit is brought or execution of the decree which may be against your person or property, or both.

**Form No. 6**

**[ Rule 4 & 10 ]**

**Writ of summons in Admiralty action *in rem* and *in personam***

**In the High Court of Orissa, Cuttack**

(Admiralty Jurisdiction)

Admiralty action *in rem* against  
and *in personam* against

Between

... Plaintiff

and

... Defendant

To the owners of and other persons interested in.....

(i.e., the Ship ..... of the Port of .....)

and to..... (Address)

Greeting : Whereas (*enter the name and description and address of the plaintiff*) has instituted a suit in this Court against you (*as per the plaint or concise statement attached*) you are hereby required to cause an appearance to be entered for you in the Registry (*i.e.*, in the office of the Registrar of this Court) within.....days from the service upon you of the summons exclusive of the day of such service, and are summoned to appear before this Court in person or by an Advocate duly instructed to answer the plaintiff's claim on the day the case is set down for hearing, upon which day you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case, and you are hereby required to take notice that in default of your causing appearance, the suit will be liable to be heard and determined in your absence, and, if the property described in this writ is then under the arrest of the Court, it may be sold by order of the Court.

Witness.....Chief Justice of the High Court of Orissa, Cuttack the.....day  
of.....in the year one thousand nine hundred and.....

Registrar

Advocate

**Note 1**-An appearance in person or through Advocate is to be entered in the Registry, within the time limited. In default thereof, the suit will be liable to be heard *ex parte*.



**Note 2**-The written statement called for must be filed within the time limited, the defendant having first entered in appearance. In default thereof the suit will be liable to be heard *ex parte*.

**Note 3**-The writ must be returned to the High Court immediately after the service thereof, or, it not served and the time for the return thereof shall not have been extended on the.....day of.....next.

**Note 4**-Should you apprehend your witnesses will not attend of their own accord you can have subpoenas from this Court to compel the attendance of any witness and the production of any document that you have a right to call upon the witness to produce, on applying to the, Court at any time before the trial, and on payment to them of the fees and expenses prescribed by the rules of this Court.

**Note 5** - If you admit the demand you should pay the money into the Court with the costs of the suit to avoid sale of any property in respect of which the suit is brought or execution of the decree which may be against your person or property, or both.

**Form No. 7**  
**[Rule 11]**

**Praecipes for service by the Marshal of any Instrument *in rem* other than a warrant**

Suit No.....of.....20.....

In the High Court of Orissa, Cuttack  
(Admiralty Jurisdiction)

Between

... Plaintiff

and

... Defendant

I..... Advocate for the (state whether plaintiff or defendant) pray that the (state nature of the instrument) left herewith be duly executed.

Dated the.....day of 20.....

Advocate  
*To be signed by the Advocate*

**Form No. 8**

**[Rule 27]**

**Praeipce for appearance**

Suit No.....of.....20.....

In the High Court of Orissa, Cuttack

(Admiralty Jurisdiction)

Between

...Plaintiff

*Versus*

... Defendant

Enter an appearance for.....in this suit.

Dated the.....day of 20.....

(Signed)

Advocate for the Defendant

Address for service on.....

Advocate for the sole defendant

**Form No. 9**

**[Rules 38(1) and 39 ]**

**Praeipce for release**

Suit No.....of 20.....

In the High Court of Orissa, Cuttack

(Admiralty Jurisdiction)

Between

... Plaintiff

*Versus*

... Defendant

I.....Advocate for the (state whether plaintiff or defendant) in a suit (state nature of suit), against the (state name and nature of property) now under arrest by virtue of a warrant issued from the (bail having been given, or the suit having been withdrawn by me before an appearance was entered therein, etc., as the case may be), and there being no caveat against the release thereof outstanding.

Dated the day of.....20.....

Advocate

*To be signed by the Advocate*

**Form No. 10**

**[Rule 29]**

**Release**

Suit No.....of 20.....  
In the High Court of Orissa, Cuttack  
(Admiralty Jurisdiction)

To  
The Marshal,

Greeting : Whereas in the above suit commenced in our High Court on behalf of.....against..... we did command you to arrest the said.....and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said .....from the arrest effected by virtue of our warrant in the said suit, upon payment being made to you of all costs, charges and expenses attending the care and custody of the property whilst under arrest in that suit.

Witness Chief Justice of the High Court of Orissa at Cuttack the day of.....in the year of Two thousand and.....

Release Registrar

Taken out by.....on the day of 20.....the.....or vessel..... (or cargo and freight, etc., as the case may be) released from arrest pursuant to this instrument of release.

Registrar

**Form No. 11**

**[Rule 31]**

**Praeipce for Caveat release**

In the High Court of Orissa, Cuttack  
(Admiralty Jurisdiction)

Between

... Plaintiff

*Versus*

... Defendant

I,..... Advocate for the Plaintiff in this action pray a caveat against the release of the (state name and nature of the property)

Dated the.....day of 20.....

Advocate  
*To be signed by the Advocate*

**Form No. 12**

**[Rule 30]**

**Praecipe for Caveat Warrant**

Suit No.....of 20.....

In the High Court of Orissa, Cuttack

(Admiralty Jurisdiction)

Between

... Plaintiff

*Versus*

... Defendant

I, .....(*state name, address and description*) hereby undertake to enter an appearance in any suit that may be commenced in this Hon'ble Court against (*state name and nature of the property*) and within three days after I shall have been served with a copy of the plaint in such suit to give bail therein in a sum not exceeding (*state amount for which the undertaking is given*) Rupees or to pay such sum into the Registry. And I consent that all instruments and other documents in such suit may be left for me at.....

Dated the.....day of.....20.....

Advocate  
*To be signed by the Advocate*

**Form No. 13**

**[Rule 30]**

**Praecipe for caveat warrant by plaintiff**

Suit No.....of 20.....

In the High Court of Orissa, Cuttack

(Admiralty Jurisdiction)

Between

... Plaintiff

*Versus*

... Defendant

I,.....(*state name, address and description*) hereby undertake within three days after I shall have been served with a notice of any counterclaim herein in respect of which the defendant is entitled to. Arrest (*state name and nature of property*) to give bail to answer such counter-claim in a sum not exceeding (*state amount for which the undertaking is given*) Rupees .....or to pay such sum into the Registry.

Dated the.....day of.....20..

Advocate  
*To be signed by the Advocate*

**Form No. 14**

**[Rule 36]**

**Praecipe to withdraw Caveat**

Suit No.....of 20.....

In the High Court of Orissa, Cuttack

(Admiralty Jurisdiction)

Between

... Plaintiff

*Versus*

... Defendant

I,.....Advocate for the (*state whether plaintiff or defendant*) pray that the caveat against (*state tenor of caveat*), entered by me on the day of.....20.....on behalf of (*state name*) may be withdrawn.

Dated the.....day of.....20.....

(Signed)

(To be signed by the person by whom the praecipe for the, entry of the caveat was signed)

<sup>9</sup>[PART VIII  
CHAPTER XXXV  
ADVOCATES

In exercise of powers under sub-section (1) of section 34 of the Advocates Act, 1961, the High Court of Orissa has made the following rules laying down the conditions subject to which an Advocate shall be permitted to practise in the High Court and the subordinate civil and criminal courts.

1. In these rules, unless there is anything repugnant in the subject or context the word "advocate" shall include a partnership or a firm of advocates.

2. Save as otherwise provided for in any law for the time being in force, no advocate shall be entitled to appear, plead or act for any person in any court in any proceeding unless the advocate files an appointment in writing signed by such person or his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and signed by the Advocate in token of its acceptance or the advocate files a memorandum of appearance in the form prescribed by the High Court:

Provided that where an advocate has already filed an appointment in any proceeding, it shall be sufficient for another advocate, who is engaged to appear in the proceedings merely for the purposes of pleading, to file memorandum of appearance or to declare before the Court that he appears on instructions from the advocate who has already filed his appointment in the proceedings:

Provided further that nothing herein contained shall apply to an advocate who has been requested by the Court to assist the Court amicus curie in any case of a proceeding or who has been appointed at the expense of the State to defend an accused person in a criminal proceeding.

Explanation-A separate appointment or a memorandum of appearance shall be filed in each of the several connected proceedings, notwithstanding that the same advocate is retained for the party in all the connected proceedings.

Explanation 2-The appointment in writing shall be in the following form:-

VAKALATNAMA  
CAUSE TILE

Between-

.....Appellant/Petitioner

---

<sup>9</sup> Substituted vide C.S. No.3, dtd.13.12.1969

and

.....Respondent/Counter petitioner  
known all men by those presents, that by this Vakalatnama I/We.....

.....Appellant/Respondent/  
Petitioner/Opposite-party/in the aforesaid case do hereby appoint and retain..  
.....Advocate (s) to

appear for me/us, in the above case and to conduct and prosecute (of defend) the same an all proceedings that may be taken in respect of any application connected with the same, or any decree or order passed therein including all applications for return of documents or receipt of any money that may be payable to me/us in the said case and also in applications for review in appeals under Orissa High Court Order and in, applications for leave to appeal to Supreme Court. I/We authorise my/our Advocate (s) to admit any compromise lawfully entered in the said case.

Dated the

20

Signature of the executant (s)

(a) When a Vakalatnama is given by a party who can sign his/her name, it must be signed by the party. When the party cannot sign his/her name, the thumb impression or the mark of the executant must be a tested, to the satisfaction of the Advocate accepting the Vakalatnama, to have been affixed in presence of the attester.

(b) The Advocate should, as far as possible, accept Vakalatnamas from parties themselves and in case of its being not feasible from persons professing to be authorised by special or general powers-of-attorney to act on behalf of other persons, and in accepting the Vakalatnama purporting to be executed by the party in person, is bound to satisfy himself that it was so executed. When the Vakalatnama purports to be executed by a third party on behalf of the client, the Advocate is bound to ascertain that such person has been duly empowered by the client to appoint an Advocate and, has himself executed the document and no Advocate shall receive a Vakalatnama from any person other than the party himself or his recognised agent or a person duly authorised a Power-of-attorney to act in this behalf or his servant or relation.

(c) Where there are more parties than one and they want to file one Vakalatnama it may be received from any one of them or from a person duly authorised by any one of them without special authority from the other (s).

(d) When a Vakalatnama is filed by an Advocate, he shall endorse on the back of it the date of acceptance, the name of the person from whom it is received and if such person is neither the client himself nor another lawyer, he shall state the precise nature of the authority, with date, of that person. He shall also certify that he (has) satisfied himself that he does not appear or hold brief for the opposite party.



(e) A Vakalatnama containing the name of more Advocates than those accepting it cannot be accepted by any other Advocates after it has been filed in Court.

(f) When a Vakalatnama is executed by a person who is blind or illiterate or a person who does not understand the language of the Vakalatnama or by a pardanashin woman, the Advocate (s) accepting the Vakalatnama must satisfy himself that the executant signed the Vakalatnama after understanding its contents.

3. An Advocate who is not on the Roll of Advocates of the Bar Council of the State in which the Court is situate, shall not appear, act or plead in such court, unless he files an appointment along with an advocate who is on the Roll of such State Bar Council and who is ordinarily practising in such Court.

4. In case in which a party is represented by more than one advocate, it shall be necessary for all of them to file a joint appointment or for each of them to file a separate one.

5. The acceptance of an appointment on behalf of a firm or partnership of advocates shall be indicated by a partner affixing his own signature as a partner on behalf of the firm or partnership of Advocates.

6. An advocate at the time of acceptance of his appointment shall also endorse on it his address, which address shall be regarded as one for service within the meaning of rule 5 of Order 3 of the Code of Civil Procedure, 1908:

Provided that where more than one advocate accepts the appointment, it shall be sufficient for one of them to endorse his address, which address shall be regarded as one for service within the meaning of rule 5 of Order 3 C. P. Code.

7. Where an advocate appointed by a party in any of the proceedings is prevented by reasonable cause from appearing and conducting the proceedings at any hearing, he may instruct another advocate to appear for him at that hearing.

8. (1) In civil cases, the appointment of an advocate, unless otherwise limited, shall be deemed to be in force to the extent provided in that behalf by rule 4 of order 3 of the Code of Civil Procedure, 1908.

(2) In criminal cases, the appointment of an advocate, unless otherwise limited shall be deemed to be in force until determined with the leave of the Court by writing signed by the party or the advocate, as the case may be and filed in court or until the party or the advocate dies, or until all proceedings in the case are ended so far as regards the party.

(3) For the purposes of sub-rule (2), a case shall be deemed to mean every kind of enquiry, trial or proceeding before a Criminal Court whether instituted on a police report or otherwise than on a police report; and further-

(i) an application for bail or reduction, enhancement or cancellation of bail in the case,

(ii) an application for transfer of the case from one Court to another, (ii) an application for stay of the case pending disposal of a civil proceeding in respect of the same transaction out of which the case arises,

(iv) an application for suspension, postponement or stay of the execution of the order or sentence passed in the case,

(v) an application for the return, restoration or restitution of the property as per the order of disposal of property passed in the case.

(vi) an application for leave to appeal against an order of acquittal passed in the case,

(vii) any appeal or application for revision against any order of sentence passed in the case,

(viii) a reference arising out of the case,

(ix) an application for review of an order or sentence passed in the case or in an appeal, reference or revision arising out of the case,

(x) an application for making concurrent sentence, awarded in the case or in an appeal, reference, revision or review arising out of the case,

(xi) an application relating to or incidental to or arising in or out of any appeal, reference, revision or review arising in or out of the case (including in application for leave to appeal to the Supreme Court).

(xii) any application or act for obtaining copies of documents or for the return of articles or documents produced or filed in the case or in any of the proceedings mentioned herein before,

(xiii) any application or act for obtaining the withdrawal or the refund or payment of or out of the moneys paid or deposited in the Court in connection with the case or any of the proceedings mentioned herein before (including money paid or deposited for covering the costs of the preparation and the printing of the Transcript Record of Appeal to the Supreme Court).

(xiv) any application for the refund of or out of the moneys paid or recovered to the Supreme Court, as fine or for the return, restitution or restoration of the property forfeited or confiscated in the case or in any appeal, reference, revision or review arising out of the case as per final orders passed in that behalf,

(xv) any application for expunging remarks or observations on the record of or made in the judgement in the case or in any appeal, reference, revision or review arising out of the case, and

(xv) any application or proceeding for sanctioning prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898, of any appeal or revision arising from and out of

any order passed in such an application or proceeding, shall be deemed to be proceedings in the case:

Provided that where the venue of the case or the proceedings is shifted from one court (subordinate or otherwise) to another, the advocate filing the appointment referred to in sub-rules (1) and (2) above in the former court shall not be bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him in the latter Court that he has instructions from his client to appear, act and plead in that Court,

9. (1) Except when specially authorised by the Court or by consent of the party, an advocate, who has advised in connection with the institution of a suit, appeal or other proceeding or has drawn up pleadings in connection with such matter, or has during the progress of any suit, appeal or other proceeding appeared, acted or pleaded for a party, shall not, unless he first gives the party whom he has advised or for whom he has drawn up pleadings, appeared, acted or pleaded, an opportunity of engaging his services, appear or act or plead in such suit, appeal or other proceeding or in an appeal or application for revision arising there from or in any matter connected therewith for any person whose interest is in any manner in conflict with that of such party.

Provided that the consent of the party may be presumed if he engages another advocate to appear, act or plead for him in such suit, appeal or other proceeding without offering an engagement to the advocate whose services were originally engaged by him or on his behalf.

(2) Where it appears on the face of the record that the appearance of an advocate in any proceeding for any party is prejudicial to the interest of the other party on account of the reasons mentioned in Sub-rule (1) above, the Court may refuse to permit the appearance to be filed or cancel such appearance if it has already been filed, after giving the said advocate an opportunity of being heard.

(3) An Advocate who discloses to any party information confined to him in his capacity as an advocate by another party without the latter's consent shall not be protected merely by reason of his being permitted to appear, act or plead for the said party.

10. (a) The appointment of a firm or partnership of advocate may be accepted by any partner on behalf of the firm.

(b) No such firm or partnership shall be entitled to appear, act or plead in any Court unless all the partners thereof are entitled to appear, act or plead in such Court.

(c) The name of the firm or partnership may contain the names of the persons who were or are members of the partnership but of no others.

(d) The words "and company" shall not be affixed to the name of any such partnership or firm.

(e) The names of all members of the firm shall be recorded with the Registrar of the High Court and/or the District Judge as the case may be and the State Bar Council, and the names of all the partners shall also be set out in all professional communication issued by the partners or the firms.

(f) The firm of advocates shall notify to the Registrar of the High Court and/or the District Judge, as the case may be, and the State Bar Council, and change in the composition of the firm or the fact of its dissolution as soon as may be from the date on which such change occurs or its dissolution takes place.

(g) Every partner of the firm of advocates shall be bound to disclose the names of all the partners of the firm whenever called upon to do so by the Registrar of the High Court, the District Judge, the State Bar Council, any Court or any party for or against whom the firm or any partner thereof has filed the appointment or memorandum of appearance.

(h) In every case where a partner of a firm of advocates signs any document or writing on behalf of the firm he shall do so in the name of the partnership and shall authenticate the same by affixing his own signature as partner.

(i) Neither the firm of advocate nor any partner thereof shall advise a party or appear, act or plead on behalf of a party in any matter or proceeding where the opposite party is represented by any other partner of the firm or by the firm itself.

11. No advocate shall be permitted to file an appointment or memorandum of appearance in any proceeding in which another advocate is already on record for the same party save with the consent of the Court, unless the former advocate has ceased to practise or has by reason of infirmity of mind or body or otherwise become unable to continue to act.

12. An advocate may correct any clerical error in any proceeding with the previous permission of the Registrar or an officer of the Court, specially empowered in this behalf by the Court obtained on a memorandum stating the correction desired.

13. No advocate who has been disbarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognised agent of any party within the meaning of Order 3 of the Code of Civil Procedure, 1908.

14. No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of contempt.

15. Advocates appearing before the Court shall wear the following dress:-

(1) Advocates other than lady advocates-

(a) Black buttoned of coat (Chapkan), achaken or sherwani), Barrister's gown and bands, or

(b) Black open collar coat, white shirt, white collar, stiff or soft, with Barrister's gown and bands.

Lady Advocates-

Regional dress of subdued colour or colours with Barrister's gown and bands.]

## CHAPTER XXXVI

### Rules regarding Advocates' Clerks

1. In these rules the expression 'authorised clerk' means a clerk employed by an advocate ordinarily practising in the High Court, and permitted as such to transact business with the offices of the High Court of the Courts subordinate thereto, in accordance with the rules and practice of the Court and such instructions as may, from time to time, be issued by the Registrar of the High Court.

2. An advocate ordinarily practising in the High Court may make an application to the Registrar in pursuance of these rules, for the recognition of a clerk, who on such recognition, shall be known as an "authorised clerk" for the purposes of transacting business in accordance with rule (1) of these rules. No Advocate may make an application for more than one authorised clerk save with the express recommendation of the High Court Bar Association certifying that the Advocate's practice is such that the number of clerks recommended is essential.

3. A register of all authorised clerks shall be maintained in the office of the Registrar, and to each authorised clerk shall be given, under his orders, a card in the prescribed form. Every authorised clerk while on duty shall wear a long black coat or black chapkan with a blue band one inch broad on the cuff of the left sleeve. The register shall be in the following form:-

Register of Authorised Clerks employed by Advocates of the

Orissa High Court

Register No.	Name of recognised clerk	Father's name	Residence of recognised clerk	Date of registration	Date of renewal each year	Name of Advocate by whom employed

4. Registration shall be valid only until the close of the year within which it takes place. Each card (which shall be strictly non-transferable) shall be returned at the close of the year with (when it is desired to renew the clerk's registration) an application for the purpose and the certificate mentioned in rule 9 below.

On the 15th day of January of each year the Registrar shall strike from the register the names of all clerks who have not applied for renewal. Any such clerk shall from that date cease to enjoy the privileges accorded to authorised clerks under these rules. He shall be

called upon through the advocate employing him to surrender his card. Upon his failure to comply within a reasonable time he may be declared ineligible for any subsequent employment as an authorised clerk.

5. An advocate shall at once report to the Registrar the termination of his employment of any authorised clerk, and on termination of his employment a clerk shall immediately return his card, failure to do so rendering him liable to the penalty mentioned in the last preceding rule.

6. No clerk employed by an advocate referred to in rules 1 and 2 of these rules shall be allowed to transact any business with or to have access to any of the offices of the Court or the Courts subordinate thereto unless he is at the time of an authorised clerk, and properly dressed as such:

Provided that an authorised clerk shall not be debarred from working only by reason of the fact that his card has been sent before the 15th day of January to the Registrar for renewal in the ordinary Course:

Provided also that the lost cards may be replaced on payment of a fee to be prescribed by the Registrar and during the interval the clerk may work on a temporary permit to be granted by the Registrar.

7. It shall be the duty of an advocate at once to inform the Registrar of any serious misconduct which comes to his knowledge on the part of his authorised clerk.

When it is alleged that an authorised clerk is guilty of misconduct, the Registrar may, for reasons to be recorded in writing, and after hearing the clerk in his defence if the latter so desires, order his suspension or the removal of his name from the register and the cancellation of his card, and on the passing of such order the clerk shall cease to be an authorised clerk.

The Registrar may further in his discretion declare the clerk ineligible for any subsequent employment as an authorised clerk or may pass such other order as he may deem just and proper.

8. If a person who has been suspended or whose name has been removed from the register under rule 7 is thereafter recommended for registration by any advocate, the fact of such suspension or removal shall be mentioned in the recommendation.

9. When submitting an application under rule 2, and when it is desired to renew registration, the advocate shall furnish a certificate to the effect that he knows personally, or has satisfied himself by proper enquiry, that the clerk in question is a person of good character and antecedents; that he is fit to be employed as an authorised clerk, and will be employed bona fide and solely (subject to the proviso to rule 10) in the advocate's own service and for the purpose of his legal business in accordance with these rules; that his employment is necessary for the advocate's professional practice and that the advocate will make it a condition of his accepting a brief that remuneration shall be paid to his authorised clerk or clerks in an amount not less than five per cent of the fee paid to the advocate subject

to a minimum of Rs.2. Such an application shall be accompanied by a written undertaking from the proposed clerk to the effect that during the continuance of his serving as such registered clerk he shall not write any deed or documents for any person other than the client of his master.

In the case of a first application he shall furnish an undertaking that if it comes to his notice that the clerk is or has been working as a tout he shall at once report the fact to the Registrar.

Before registering the name of a clerk or renewing registration the Registrar may refer the application to the High Court Bar Association for its opinion, and shall ordinarily do so in the case of a first application.

10. An authorised clerk shall transact business for remuneration in the offices of the High Court or Courts subordinate thereto only on behalf of the advocate whose clerk he is or of the clients of the said advocate:

Provided that whenever the sole authorised clerk of an advocate is unavoidably absent from the Court the authorised clerk of any other advocate may work in his place, with the previous consent in each case of the advocates concerned.

11. No authorised clerk shall demand or accept remuneration from any person except from the advocate whose clerk he is or from the clients of his advocate.

12. The Registrar shall be entitled, for reasons to be recorded in writing, in his discretion to reject any application for the registration or renewal of registration of an authorised clerk.

13. Should it come to the notice of any advocate or of any officer or assistant of the High Court that any person other than an authorised clerk as hereinbefore defined, is transacting or attempting to transact any of the business of an authorised clerk within the precincts of the High Court, he shall at once report the fact to the Registrar, who shall take such action as he may deem fit, and may exclude such person from the precincts of the Court.

14. No authorised clerk shall do an act which his master himself is not empowered to do, e. g., he shall do no act in a case in which his master is employed to plead only.

14-A. No person registered as the clerk of an Advocate shall write out any deed or document for any client of his master unless an endorsement is made on the document itself by the Advocate concerned to the effect that it has been written at his direction at his office.

15. Subject to rule 14, an authorised clerk may act in all matters of a routine nature which do not require the personal attendance of the advocate, and shall be allowed to do the following acts on behalf of his master-

- (1) To receive notices, and to obtain forms of notices from the office.

(2) To file appeals and applications before the Peshkar of the bench or Registrar, and to present appeals and applications under rules 30 and 31, Chapter VII, Part II of the Orissa High Court Rules and applications for interlocutory orders to the Deputy Registrar and the Assistant Registrar as the case may be.

(3) To obtain office reports upon applications.

(4) To present to the Registrar or Deputy Registrar or in the absence of the Deputy Registrar to the Assistant Registrar applications signed by his master for-

- (a) Copies of documents,
- (b) Inspection of records and registers,
- (c) return of documents,
- (d) refund of surplus balances at credit,
- (e) Inclusion of documents in a paper-book.

(5) To take notes from deficiency reports of the Stamp Reporter and file necessary stamps.

(6) To inspect records with his master or with another advocate if his master permits it and is himself empowered to inspect.

(7) To deposit money and file court-fees.

(8) To receive paper-books, copies and the like

(9) To file vakalatnamas, retainer slip, certificates of fees, written forms of processes, and copies of papers and briefs.

(10) To identify, if required and in a position to do so persons making inspection of records of swearing affidavits.

11. To apply for copies in his own name, stating that the application is being made on behalf of his master to be named.



## CHAPTER XXXVII

### Rules framed by the High Court of Judicature, Orissa under section 6 (2) of the Indian Bar Councils Act, 1926 (XXXVIII of 1926)

#### (A) Election

1. In these rules unless there is anything repugnant in the subject or context:-

(i) "Act" means the Indian Bar Councils Act, 1926

(ii) "The Advocate-General" means the Advocate-General, Orissa.

(iii) "Council" means the Bar Council constituted for the High Court.

(iv) "Barrister" means a Barrister of England or Ireland or a member of the Faculty of Advocates in Scotland.

(v) "Chairman" means the Chairman of the Bar Council as provided by section 4 (4) or the Act.

(vi) The "High Court" means the High Court of Judicature, Orissa.

(vii) "Secretary" means the Secretary or other person appointed by the Council to perform the duties of a Secretary however designated and shall include any person appointed under rule 8. The Secretary should be a member of the Bar: he may either receive an honorarium or be honcrary. A member of the Bar, if he be the Secretary, shall not be precluded from practising the profession even though he receives any honorarium.

(viii) "Voter" means any person entitled by virtue of the Act to vote at elections to the Council.

2. Election of members of the Council shall be by postal ballot and shall be held at such place and on such day and between such hours as the Chairman may appoint, but it shall be sufficiently in time, to enable the new Council to start functioning immediately after the expiry of the terms of office of the elected members of the old Council.

3. (i) Notice of such day, hours and place shall be given by publication in the Orissa Gazette over the signature of the Secretary upon a date not less than sixty days before the date of the election. The notice shall also specify the day and hour fixed by the Chairman for receiving the nomination papers and for scrutiny of such nomination papers, the day and hour fixed by the Advocate-General for scrutiny and counting of votes, provided that any such day shall be at least 15 days after the publication of notice in the Gazette.

(ii) Copies of such notice shall also be sent by the Secretary to the Advocate-General and to the President of the High Court Bar Association to be affixed and circulated as they may direct.

4. Every nomination of candidate shall be in writing in the form of a letter addressed to the Secretary and signed by two voters. The candidate nominated shall endorse his consent to such nomination in writing and append his full signature thereto. Every nomination paper shall be delivered to the Secretary personally on the date and between the hours notified beforehand; provided that a nomination paper may be sent by registered post so as to be received by the Secretary not later than the date and the latest hour fixed for receiving the nomination papers.

5. All nomination papers shall be scrutinised by the Secretary on the date and hour notified before. The Secretary may submit to the Advocate-General any nomination paper to the validity of which he may have any doubt and subject to the provisions of rules 15, 16, 18 and 19, the decision of the Advocate-General shall be final.

6. A list of candidates whose nomination papers have been declared valid shall be published on the Notice Board of the Council and a copy of the same shall be sent to each of the candidates nominated for election.

7. It shall be open to any candidate validly nominated to withdraw his candidature by notice in writing subscribed by him not later than seven days after the date of publication of the list referred to in rule 6 and this withdrawal once made shall be final.

8. Elections and all matters relating thereto provided for by those rules shall be conducted by the Advocate General with the help of the Secretary or of such person as the Bar Council may appoint to discharge the duties of the Secretary under these rules; the Secretary or such person may, however, with the approval of the Chairman appoint any person or persons to assist him in the conduct thereof.

9. Subject to the provisions of section 4 (2) of the Act if the number of candidates validly nominated and who have not withdrawn, does not exceed the number of vacancies to be filled by election such candidates shall be declared to have been duly elected. If the number of candidates validly nominated is less than the number of vacancies to be filled by election, the candidates so nominated shall be declared elected and the electorate shall be called upon to fill up the remaining vacancy or vacancies, as the case may be.

If the number of candidates validly nominated exceeds the number of vacancies to be filled by election, then the election shall be proceeded within the manner prescribed thereunder. The Secretary shall forward to each voter :- (i) a numbered declaration paper, (ii) a ballot paper on which the names of the candidates with their addresses shall be arranged in alphabetical order, and which shall bear on it the initials of the Secretary and the date of despatch, (iii) a ballot paper cover, (f) an envelope addressed to the Secretary and (v) a letter of intimation stating the number of vacancies, the date and hour fixed for the poll, and the date and hour fixed for the scrutiny and counting of votes. The date despatching the ballot paper shall not be less than fourteen days before the date fixed for the poll.

10. The voter shall after filling up the declaration paper and the ballot paper in accordance with the directions in the letter of intimation, enclose the ballot paper in the ballot

paper cover and seal it. The sealed ballot paper cover and the declaration paper shall be enclosed in the envelope addressed to the Secretary and signed in the presence of the Munsif or any other Gazetted Officer who shall attest the same and send to the Secretary by registered post so as to be received by the Secretary not later than the date and the latest hour fixed for the poll, provided that it shall be optional to the voter to have it deposited by him or an agent in the ballot box, which shall be provided for the purpose at the place on the day during the hours fixed for the ballot.

11. On the day and at the hour appointed for the scrutiny and the counting of votes, envelopes received from the voters not later than the day and the latest hour fixed for the poll or deposited in the ballot box provided on the day and during the hours fixed for the poll shall be opened one by one and the declaration paper is not in order, he shall reject the declaration paper and shall keep it attached to the corresponding ballot paper cover unopened.

If the Advocate-General is satisfied that the declaration paper is in order, he shall put the corresponding ballot paper cover separately to be opened after the scrutiny of all the declaration papers in the aforesaid manner.

A ballot paper cover shall be rejected and not opened if (1) the envelope contains no declaration paper outside the ballot paper cover; or

(ii) the declaration paper is not the one sent by the Secretary

or (iii) the declaration has not been properly done; or (iv) the ballot paper is placed outside the ballot paper cover or (v) more than one declaration paper or cover containing ballot paper have been enclosed in one and the same envelope. In the case of rejection, the word 'Rejection' shall be endorsed on the ballot paper cover or the declaration paper or both as the case may be.

No person shall be present at the scrutiny and counting of votes except the Advocate-General, the Secretary and such person or persons as the Advocate-General may appoint to assist him provided that the candidates may remain present if they so like.

12. At the conclusion of the counting of votes the voting paper shall be placed in a box sealed and the names of the candidates shall be set out in a list which shall specify the number of votes obtained by each candidate. The list so prepared shall be filed by the Secretary as of record.

13. (1) The number of candidates who shall be declared to have been elected shall be ten; such election shall be determined by reference to the largest number of votes obtained provided that at least five of the persons elected shall be persons qualified under section 4 (2) of the Act.

(ii) In the event of an equality of votes the Secretary shall draw lots in the presence of the Advocate-General for the purpose of deciding the priority between candidates having the same number of votes.

14. A list of candidates declared elected to the Council shall be prepared and signed by the Secretary and submitted by him to the Advocate-General who shall certify the same by his signature and the same shall be filed as of record by the Secretary. Copies thereof shall be published in the Orissa Gazette and sent to the Advocate- General and President, High Court Bar Association to be affixed as they may direct.

15. A candidate may contest the validity of the election of a candidate declared to have been elected to the Council by letter signed by him and addressed to the Secretary. Such letter shall state the grounds upon which the validity of such election is con- tested and shall be delivered to the Secretary within seven days of the date of the publication in the Orissa Gazette of the list required by rule 14 to be so published and after the expiry of seven days from the date of such publication the validity of the election of a candidate shall not be challenged by a candidate on any ground whatever.

16. At any time within 30 days from the date of the publication aforesaid of the said list, the Advocate-General may refer in writing to the Committee constituted by rule 18 any question relating to the validity of the election of a candidate declared to have been elected to the Council.

17. At the expiry of 40 days from the publication aforesaid of the said list, the election shall be final and the voting papers shall be destroyed provided that in the event of the validity of an election being challenged under rule 15 or of a reference under rule 16, the voting papers shall be preserved and dealt with as the Committee appointed under rule 18 may direct.

18. All matters arising under rule 15 or 16 shall be decided by a Committee of three members to be nominated by the Chief Justice, two of whom shall be Judges of the High Court and one, a member of the Bar other than the Advocate-General and the candidates and the proposers and the said Committee shall be at liberty to hold such enquiry and in such manner as it may see fit. The decision of a majority of the said Committee shall be final as to any question that may arise at the said enquiry and in relation thereto and upon any matter referred to or to be enquired into by them under these rules.

19. If the said Committee shall decide that a candidate has not been validly elected the vacant place on the Council shall be filled as hereinafter provided in the case of a casual vacancy.

20. (1) The term of office of nominated and elected members shall be three years from the date of the first meeting of the council and thereafter, there shall be fresh nomination and election of members after every three years according to the rules in force at the time.

(ii) A casual vacancy unfilled on the date upon which elected members go out of office as aforesaid shall be deemed to be a going out of office for the purpose of this rule and a member who prior 10 the said date shall have stated that he will not seek re-election, which statement shall be recorded by the Secretary, shall be deemed to go out of office and members ceasing to be members by virtue of rule 24 shall be deemed to go out of office.

(iii) Elected members going out of office shall be eligible for re-election. No elected member who by reason of his retirement or under rule 25 has caused a casual vacancy shall be eligible for re-election at the next election.

21. Nominated members who go out of office under the above rule shall be eligible for re-nomination. 22. A casual vacancy among nominated members of the Council shall be filled by nomination by the High Court.

23. A casual vacancy among elected members of the Council shall be filled by the Council appointing the candidate with most votes not being already a member of the Council who failed at the last preceding election to secure election. In the event of two or more candidates having received the same number of votes, the Council shall draw lots under the direction of the Chairman, should there be no such candidates qualified to fill the vacancy, the Council shall elect a duly qualified Advocate thereto in such manner as the Chairman may determine provided that any Advocate put forward for election shall have been proposed by one and seconded by another member of the Council.

24. A member of the Council who became a member thereof under the provisions of the last preceding rule shall cease to be member of the Council on the date following that upon which members shall go out of office under the provisions of rules 20 and 21 but shall be eligible for re-election.

25. Any member of the Council who shall fail to attend three consecutive meetings of the Council other than adjourned meetings shall be deemed to have vacated his seat and the same shall be deemed to be a casual vacancy unless such absence by the Council is permitted in advance or condoned subsequently.

A member of the Council who shall be deemed to have vacated his seat as above shall not be eligible for appointment under rule 22 or 23.

26. The Council shall be deemed duly constituted notwithstanding any vacancy in the elected or nominated members.

### **Meetings**

27. Meeting of the Council shall be convened by the Secretary under the direction of the Chairman, or, in his absence from Cuttack of the Vice-Chairman, who shall determine the time and place thereof, provided that no meeting shall be convened for any date falling within a vacation of the High Court.

28. Notices of meetings of the Council shall be given as the Council may, from time to time, determine.

29. The Council shall elect from among their members a Chairman and a Vice-Chairman who shall hold office until they or either of them shall resign the Council or until another Chairman or Vice-Chairman shall be elected.

30. The election of the Chairman and the Vice-Chairman shall be by ballot to be held in such manner as the Chairman may determine provided that no member of the Council shall be deemed to have been duly elected as Chairman or Vice-Chairman unless he shall have secured a majority of votes of the members present.

31. The election of the Chairman and the Vice-Chairman shall be held at the first meeting of the Council after an election of members: Provided that the convened Chairman may adjourn the election should no member have secured a majority of votes as provided by rule 30: Provided further that at the first meeting of the first Councils and if such meeting be adjourned as provided above at the adjourned meeting while such meeting shall be convened by the Registrar of the High Court, the members present will elect a Chairman for that meeting.

32. At all meetings of the Council five members present shall form a quorum.

33. Resolutions of the Council shall be by show of hands. Each member present shall have one vote and the Chairman of the meeting shall have a casting vote.

34. No matter determined by a resolution of the Council shall be reconsidered or reopened within three months from the date of such resolution and the Chairman shall decide if a matter is within this rule and his decision shall be final.

35. The Council may make such rules of business as it may think fit not inconsistent with the Act or these rules.

**(B) Rules Framed by the High Court of Judicature, Orissa,  
under section 12 of the Indian Bar Councils Act,  
1926 (XXXVIII of 1926)**

**A-TRIBUNAL**

1. Upon a complaint that an advocate has been guilty of misconduct being referred by the High Court to the Bar Council, the complaint and all affidavits or other documents annexed thereto shall be forwarded forthwith by the Bar Council to the President of the Tribunal.

2. (i) When the complaint has been made by a Court the person if any, aggrieved by the alleged misconduct of the Advocate concerned may appear before the Tribunal to prosecute the complaint and may do so by Advocate and shall be deemed the prosecutor.

(ii) In default of such persons so appearing to prosecute the complaint-

(a) the Bar Council may appear for such purpose and in that case may do so by Advocate and shall be deemed the prosecutor;

(b) If the Bar Council shall not so appear all notices and other documents required by these rules to be served upon the Advocate concerned shall be caused to be served by the Secretary to the Bar Council or as the Tribunal may direct.

**3.** When the complaint has been made by a person other than a Court or by the Bar Council such person or the Bar Council respectively shall be entitled to appear before the Tribunal to prosecute the complaint and may do so by advocate and shall be deemed the prosecutor.

**4.** The President of the Tribunal shall fix a date, hour and place for the enquiry by the Tribunal which shall not be later than fourteen days from the receipt of the said complaint by him.

**5.** Not less than seven days before the day so fixed, notice of the said date, hour and place shall be given by the prosecutor to the Advocate concerned personally and there shall at the same time be delivered to him copies of the said complaint and of all affidavits or other documents annexed thereto.

**6.** On the date and at the hour and place so fixed the Tribunal shall assemble and if it shall appear that the notice and copies referred to in rule 5 have not been served as therein provided, the Tribunal shall adjourn the enquiry to a date then to be fixed and may direct that the said notice and copies shall be served by registered post or otherwise as to the Tribunal may seem fit provided always that seven days notice shall be given to the advocate concerned.

**7.** Not less than two days before the date or adjourned date fixed for the enquiry the Advocate concerned shall send to the Secretary to the Bar Council an explanation in writing signed by himself and any affidavit intended to be used on his behalf and copies thereof to the prosecutor or his Advocate, if any, and the same shall be placed before the Tribunal on the date fixed for the enquiry.

**8.** On the date or adjourned date fixed for the enquiry the prosecutor or his Advocate shall place before the Tribunal any affidavit or affidavits in reply intended to be used at the enquiry and shall cause copies thereof to be made and delivered to the Advocate concerned or his Advocate.

**9.** The Tribunal may adjourn the enquiry from time to time to a date and place to be fixed at the time of adjournment and may make such orders and give such directions in regard to the enquiry and all matters relating thereto as it may think fit and shall make all such orders as may be necessary in regard to matters specified in section 13 of the Indian Bar Councils Act, 1926.

**10.** The Advocate concerned shall be entitled to appear at the enquiry by an Advocate.

**11.** On the date or adjourned date fixed for the enquiry the Tribunal may –

(1) hear and determine the matter upon the affidavits and other documents, if any, filed as aforesaid, and for such purpose may in their discretion allow the deponents to be cross-examined on their affidavits; or

(2) hear and determine the matter upon oral evidence.

**12.** If the Tribunal shall decide to hear and determine the matter upon oral evidence the procedure generally shall be that followed at the hearing of Civil Suits and in particular –

(1) Evidence shall be given in the English language and be interpreted into that language in the case of vernacular witnesses and shall be taken down in such manner as the Tribunal may direct: provided that if a shorthand writer be employed the transcript of the shorthand writer's notes or the evidence shall be the record of the deposition of the witnesses.

(2) The Advocate concerned shall be a competent witness on his own behalf and if examined he may be cross-examined by the prosecutor or by the advocate appearing to prosecute the enquiry on behalf of the prosecutor.

**13.** The finding of the majority of the Tribunal shall be the finding of the Tribunal in case of a difference of opinion, provided that a dissentient member of the Tribunal may record his dissent by a note in writing.

**14.** The finding of the Tribunal shall be in writing and the same shall be forwarded with such note of dissent, if any, attached thereto to the High Court in manner, provided by section 12 (2) of the Indian Bar Council Act, 1926.

**15.** Generally and so far as may be, but without prejudice to the foregoing rules, the Tribunal shall observe the procedure prescribed by the Civil Procedure Code, 1508.



## **B - DISTRICT COURT**

**1.** (1) When the complaint has been made by a Court the person, if any, aggrieved by the alleged misconduct of the Advocate concerned may appear before the District Court to prosecute the complaint and may do so by Advocate or pleader entitled to appear in such Court and shall be deemed the prosecutor.

(2) In default of such person so appearing to prosecute the complaint –

(a) the Government pleader may appear for such purpose and in that case may do so by Advocate or pleader entitled to appear in such Court and shall be deemed the prosecutor ;

(b) if the Government pleader shall not so appear, all notices and other documents required by these rules to be served upon the Advocate concerned shall be caused to be served as the District Judge may direct.

**2.** When the complaint has been made by a person other than a Court or by the Bar Council such person or the Bar Council respectively shall be entitled to appear before the District Court to prosecute the complaint and may do so by Advocate or pleader entitled to appear in such Court and shall be deemed the prosecutor.

**3.** The District Judge shall fix a date, hour and place for the enquiry which shall not be later than three weeks from the receipt or the said complaint by him.

**4.** Not less than seven days before the date so fixed notice of the said date, hour and place shall be given by the prosecutor to the advocate concerned personally and there shall at the same time delivered to him copies of the said complaint and of all affidavits or other documents annexed thereto.

**5.** On the date and at the hour and place so fixed the Court shall sit, and if it shall appear that the notice and copies referred to in rule 4 have not been served as therein provided the District Judge shall adjourn the enquiry to a date then to be fixed and may direct that the said notice and copies shall be served by registered post or otherwise as to him may seem fit provided always that seven days notice shall be given to the advocate concerned.

**6.** Not less than two days before the date or adjourned date fixed for the enquiry the Advocate concerned shall send to the District Judge an explanation in writing signed by himself and any affidavits intended to be used on his behalf and copies thereof to the prosecutor or his legal representative, if any, and the same shall be placed before the Court on the date fixed for the enquiry.

**7.** On the date or adjourned date fixed for the enquiry the prosecutor or his Advocate or pleader shall place before the Court any affidavit or affidavits in reply intended to be used at the enquiry and shall cause copies thereof to be made and delivered to the advocate concerned or his legal representative.

**8.** The Court may adjourn the enquiry from time to time to a date and place to be fixed at the time of adjournment and may make such orders and give such directions in regard to the enquiry and all matters relating thereto as it may think fit and shall make all such orders as may be necessary in regard to matters specified in section 13 of the Indian Bar Councils Act, 1926.

**9.** The Advocate concerned shall be entitled to appear at the enquiry by an advocate or pleader entitled to appear in such Court.

**10.** On the date or adjourned date fixed for the enquiry the Court may –

(1) hear and determine the matter upon the affidavits, and other documents, if any, filed as aforesaid, and for such purpose may in its discretion allow the deponents to be cross-examined or their affidavits, or

(2) hear and determine the matter upon oral evidence

**11.** If the Court shall decide to hear and determine the matter upon oral evidence the procedure generally shall be that followed after hearing of Civil Suits and in particular –

(1) Evidence shall be given in the English language and shall be interpreted into that language in the case of vernacular witnesses and shall be taken down in the manner prescribed for the recording of evidence of Civil Suits.

(2) The advocate concerned shall be a competent witness on his own behalf and if examined he may be cross examined by the prosecutor or by the advocate or pleader appearing to prosecute the enquiry on behalf of the prosecutor.

**12.** The finding of the Court shall be in writing and the same shall be forwarded to the High Court in manner provided by the Indian Bar Councils Act, 1926, section 12 (2).

**13.** Generally and so far as may be, but without prejudice to the foregoing rules, the Court shall observe the procedure prescribed by the Civil Procedure Code, 1908.

**(C) Rules framed by the High Court of Judicature, Orissa under section 16 of the Indian Bar Councils Act, 1926 (XXXVIII of 1926)**

1. The fees payable as costs by any party in respect of the fees of his adversary's Advocate upon all proceedings in the High Court shall be fixed and payable in accordance with rules 13 to 28 of Chapter XVII, Part IV of the Rules of the High Court.

2. The fees payable as costs by any party in respect of the fees of his adversary's Advocate upon all proceedings in any Court subordinate to the High Court shall be in the discretion of that Court and shall ordinarily be according to the scale prescribed for pleaders in Rule 28, Chapter I, Part V, Vol.I of the General Rules and Circular Order (Civil) of the High Court.

**(D) Rules framed by the Orissa High Court Bar Council under the Indian Bar Councils Act (XXXVIII of 1926) and the Professional Etiquette Rules**

The following bye-laws have been framed by the Bar Council of the High Court of Judicature, Orissa under section 7 of the Indian Bar Councils Act, 1926 :-

1. These Bye-laws and Rules of the Bar Council shall be known and cited as Bye-laws.

2. In these Bye-laws, unless there is anything repugnant in the subject or context –

(a) The word "Act" shall mean the Indian Bar Councils Act, 1926.

(b) Word "Chairman" shall mean the Chairman of the Bar Council as provided by section 4(4) of the Indian Bar Councils Act, 1926.

(c) The word "Vice-Chairman" shall mean the Vice-Chairman of the Bar Council as provided by section 4 (4) of the Indian Bar Councils Act, 1926.

(d) The word "Committee" shall mean Committee appointed and constituted under section 7 (6) of the Indian Bar Councils Act, 1926.

(e) The word "Council" shall mean the Bar Council constituted for the High Court of Judicature, Orissa, under the Indian Bar Councils Act, 1926.

**Ministerial Officers and Servants**

3. The Council shall, for the purpose of administering its affairs, appoint a Secretary and may also appoint –

(i) A Treasurer

(ii) One or more clerks

(iii) One or more peons

4. The Secretary of the Council may be honorary or stipendiary. The Treasurer, if appointed, shall be honorary and be from amongst the members of the Council.

5. The Secretary shall be the Chief Ministerial Officer of the Council, and shall, in all things, act under the directions and control of the Council and the Chairman, and shall exercise and perform the following powers and duties –

- (i) To conduct the official correspondence of the Bar Council
- (ii) To convene meetings of the Council and of the Committee and Sub-committees that might be appointed by the Bar Council.
- (iii) To keep minute books of the Council and Committee and Sub-committee and all other records of the Bar Council.
- (iv) To prepare the annual report and supervise the work of the office.
- (v) To receive moneys and grant receipts.
- (vi) To deposit all moneys received in Bank approved by the Council.
- (vii) To grant copies of documents on the record of cases referred to the Council for enquiry on payment and certify them to be correct, and to allow inspection of records.
- (viii) To act as the Registrar of the Tribunal appointed for holding enquiries and to issue notices and processes in cases referred for enquiry.
- (ix) To appoint, with the previous sanction of the Council, such whole-time or part-time staff as is necessary to carry on the work of the Council.
- (x) To exercise full control over the staff employed by the Bar Council subject to the direction of the Council.
- (xi) To act, unless otherwise provided, as the Secretary of any other Committee or Sub-committee that may be appointed by the Bar Council from time to time.
- (xii) To be the custodian of records, library, common seal and such other property of the Bar Council as it might possess from time to time.
- (xiii) To maintain and preserve complete and accurate account receipts, vouchers and other account papers and to prepare balance sheets and frame budget estimates of income and expenditure.

### **Committees**

6. The following Committees may be appointed and constituted the Council for transacting the business of the Council

- (a) The Enrolment Committee.
- (b) The Status and Discipline Committee,
- (c) The Finance Committee,
- (d) The Rules Committee, and
- (e) Any other Committee or Committees.

7. The Chairman of the Council shall be ex officio Chairman of the Committee of which he may be a member.

8. The Vice-Chairman shall be the ex officio Chairman of the Finance Committee and of such other Committees of which he may be a member and the Chairman is not a member.

9. (i) The Committee of which the Chairman or Vice-Chairman is not ex officio Chairman will at its first meeting, elect its own Chairman.

(ii) In the absence of the Chairman at a meeting of a Committee, the members present shall elect a Chairman from amongst themselves for the meeting.

10. The Secretary of the Council shall act as the Secretary to each Committee. A minute book for the proceedings of each Committee shall be separately maintained.

11. The Committees shall consist of six members elected thereto by the Council. These six shall include the ex officio Chairman and Secretary of the Council. At all meetings of a Committee, four members present shall form a quorum.

12. No quorum will be required for a meeting adjourned for want of a quorum, but no business not included in the agenda of that meeting shall be transacted at the adjourned meeting.

13. All items of expenditure, placed before the Council by any of its Committee for sanction, shall be first placed by that Committee before the Finance and Accounts Committee for report and necessary recommendation for sanction and otherwise.

#### **Enrolment Committee**

**14.** The functions and duties of the Enrolment Committee shall be –

(i) To deal with applications for enrolment referred to the Council by the High Court: provided that applications, in which the Committee has reason to object to any enrolment, shall be reported to and finally dealt with by the Council.

(ii) To submit its report and recommendations to be placed before the Council.

#### **Status and Discipline Committee**

**15.** The functions and duties of the Status and Discipline Committee shall be –

(i) To deal with complaints and references from the members of the Bar or from the Bar Associations relating to the prestige, etiquette, status and discipline of the profession and to report thereon to the Council.

(ii) To enquire on reference by the Council into the cases of professional impropriety and report them to the Council.

(iii) To submit the report and recommendations of the Committee to be placed before the Council.

### **The Rules Committee**

**16.** The following shall be the duties and functions of the Rules Committee –

- (i) To submit draft rules as required under the various provisions of the Indian Bar Councils Act for the approval of the Bar Council.
- (ii) To suggest any modifications, alterations or additions to or omission of existing rules.
- (iii) To submit its report and recommendations to be placed before the Council.

### **Finance and Accounts Committee**

**17.** The duties and functions of the Financial Committee shall be –

- (i) To prepare an annual budget for approval of the Council, to check and audit the accounts of the Council, and to prepare the statement of accounts and balance sheets.
- (ii) To make recommendations and to take necessary step for investment and management of the funds of the Bar Council and to report the same to the Bar Council.

### **Other Committees**

**18.** The other Committees, if any, shall have such powers and duties as may be assigned to them by the Council and they may meet when required.

### **(E) Business Rules**

#### **RULES MADE UNDER RULE 35 OF THE RULES REGARDING CONSTITUTION AND PROCEDURE OF THE BAR COUNCIL**

**1.** Notices of the meetings of the Bar Council and of the Committee shall be in writing or typing sent by post or otherwise as the Secretary deems necessary under his signature.

**2.** Ordinarily one week's notice shall be given, but the Chairman may call a meeting at shorter notice if the urgency of the business so requires.

**3.** The Chairman of the Bar Council or in his absence the Vice-Chairman shall preside at all meetings of this Council.

In the absence of the Chairman and Vice-Chairman, a Chairman for the meeting shall be elected from amongst the members present.

**(F) Rules to regulate the admission of persons to be Advocates of the High Court of Judicature, Orissa, made under section 9 of the Indian Bar Councils Act, 1926**

**Admission Rules**

1. Subject to the conditions hereinafter prescribed the following persons shall be qualified to present an application for being admitted as Advocates of the High Court of Judicature, Orissa:-

(a) Any person who has taken a degree in Law at any of the Universities established by Law in India or in the United Kingdom, or

(b) is an Advocate entered on the roll of Advocates of a High Court in the Indian Union, other than the High Court of Orissa ; provided that the rules for admission in such High Court entitle an Advocate on the roll of the High Court of Orissa to be enrolled as an Advocate of that High Court and provided further such an Advocate gives an undertaking in his application to have his name removed from the roll of Advocates of that High Court within three months from the date of his admission to the High Court of Orissa, or

(c) is a Barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland, or

(d) is an Attorney of High Court of Orissa who has practised as such for three years preceding his application, or

(e) is a Graduate in Law who has practised as a Pleader in a District Court or in a Sub divisional Court in the State of Orissa, continuously for a period of three years and has secured a certificate of efficiency from the District Judge, or is a pleader who has passed Pledership Examination of the Patna High Court and has practised as such Pleader in the State of Orissa continuously for not less than ten years in the District Court and has secured a certificate of efficiency from the District Judge, or

(f) has presided as a Judge of a Civil Court in the State of Orissa for a period of not less than five years immediately preceding the date of his application and is a person who has taken a degree in Law at any of the Universities established by Law in India or in the United Kingdom:

Provided that he will not be admitted except upon terms that he will not practise in places in which he has exercised judicial powers within five years of the date of application.

In case of a person mentioned in clauses (a), (c) and (d) of this rule 1, the applicant shall not be entitled to enrolment unless he –

(i) has undergone a course of training for one year in the chambers of an Advocate on the roll of the Orissa High Court of not less than ten year's standing or has read in Chambers with a Barrister in England whose name is approved by the Inn of Court to which the applicant belongs and has secured a certificate from such Advocate or Barrister of his having undergone the training and acquired efficiency:

Provided that the period of training that one might have undergone before these rules came into force will be taken into account in completing the period of one year, or

(ii) has practised as a Barrister in England or Northern Ireland or as a member of the Faculty of Advocates in Scotland for a period of three years.

Explanation – High Court means High Court within the meaning of Article 366 (14) of the Constitution of India.

2. The training under an Advocate of the Orissa High Court shall commence after the candidate has been called to the Bar or has qualified for the degree in law and the Advocate under whom the training is undergone shall, during the whole period of training, be actually practising as an Advocate in the High Court and shall certify that the candidate has, for a period of one year, diligently pursued his studies in his Chambers, has attended the Court and is now fit to be enrolled as an Advocate.

The training referred to above shall ordinarily be under one and the same Advocate; provided that for good and sufficient reasons he may be permitted by the Court to complete his period of training in the Chambers of any other Advocate or Advocates:

Provided that in the case of persons referred to in clause (c) of rule 3 the training by way of reading in Chambers with a Barrister in England may commence at any time after the candidate has passed the final examination for call to the Bar.

3. The candidate while undergoing training under an Advocate of the Orissa High Court shall keep a regular note book of diary showing the details of work done by him in the Chambers of the Advocate and in Court and the same shall be initialled and dated by the Advocate.

4. No person shall, during the period of his training be actively engaged in any trade or business or any other occupation incompatible with the profession of an Advocate.

5. Every Advocate taking a person to undergo training under him to complete the period of training shall report the same to the Court and the period of training shall be reckoned to have commenced or been continued from the date of receipt of the aforesaid report of the Registrar and no Advocate shall take under him for training more than two persons at one and the same time, provided this rule shall not apply to Barristers reading in Chambers in England under rule 3 (1).

6. No woman shall be disqualified for admission as an Advocate by reason only for sex.

7. An application for admission shall be in writing and shall be addressed to the Chief Justice and the Judges of the High Court and shall be delivered to the Registrar.

The applicant shall state –

- (a) Father's name, occupation and residence
- (b) Age
- (c) Nationality



- (d) Place of residence
- (e) Address to which any communication required to be made under these rules may be sent;
- (f) Occupation and career between the date of leaving the College and the date of applying;
- (g) Trade, avocation or employment which the person applying is following on the date of applying and a statement whether he is willing to abandon the trade, avocation or employment if such abandonment is made a condition of admission.
- (h) The date of call to the Bar or admission to the Faculty of Advocates in Scotland or to the degree of Law of the applicant;
- (i) Whether or not he intends to practise ordinarily and regularly within the jurisdiction of the Court;
- (j) Whether or not he holds any appointment under Government and if he does the nature of such appointment;
- (k) Whether or not he is engaged in any business in India and if he is, the nature of such business and place where the same is carried on; and
- (l) Whether a previous application by him for admission as an Advocate has been refused by the High Court in India and shall be dated and signed by the applicant. The application must be accompanied by a certificate of the applicant's call to the English or the Irish Bar or of his admission to the Faculty of Advocate in Scotland or to the degree in Law in the University and also where the applicant has read in the Chambers of an Advocate, a certificate from such Advocate that he has complied with rule 3.

**8. The enclosures accompanying the application for admission shall include –**

- (1) Certificate and credentials testifying to the qualifications and eligibility of the person applying as required under the aforesaid rules,
- (2) Testimonials of character of the persons applying obtained from two practising Advocates of the High Court of not less than ten years' standing,
- (3) Declaration and undertaking of the person applying under rule 1(b) of these rules in cases falling thereunder,
- (4) Declaration regarding date of birth,
- (5) Declaration of the person applying that he is pledged –
  - (a) to perform his professional duties to the litigant public and to the law Courts faithfully and conscientiously,

(b) to uphold the honour and dignity of the profession and the rights and privileges of the Bar truly and fearlessly, and

(c) to observe and obey the rules and regulations of the Bar Council and of the Bar Association of which he is or may become a member.

**9.** The person applying shall, before presenting his application deliver a copy thereof personally or by registered post to the Secretary of the Bar Council and obtain a receipt from him.

**10.** The Secretary after receiving the copy of an application for admission as Advocate shall notify the same in the notice board of the Bar Council for a period of fourteen days and intimate the Court the date of such notice. No person shall be admitted or enrolled as an Advocate till the expiry of fourteen days from the date of such notice.

**11.** Any person may, within the aforesaid period of fourteen days, prefer in writing to the Bar Council and the Court any objection to the admission of such appointment. The Court before making any order on the application for admission shall, in the case of such objection, give the applicant and the objector an opportunity to be heard in such manner as the Court may decide in each case.

**12.** If within fourteen days of receiving information from the Registrar that there is no objection to admission, the Secretary does not ask that the application be reconsidered, the applicant shall be directed to file the necessary stamp duty chargeable under the Stamp Act and a receipt from the Chairman or in his absence from the Vice-Chairman showing payment of Rs.100 to the Bar Council as fee prescribed under Section 8 (1) (b) of the Act.

**13.** When the Stamp-duty and receipt showing payment of fee of Rs.100 to the Bar Council have been filed, the Registrar shall post the application before a Bench of two Judges of which the Chief Justice or in his absence the senior puisne Judge is a member where a motion for the applicant's enrolment shall be made by an Advocate engaged by him in this behalf and it shall ordinarily be allowed.

**14.** When the stamp duty has been filed the applicant will be required to attend the High Court to sign the roll before the Chief Justice unless for special reasons, such attendance is dispensed with, in which case the roll will be signed before any other Judge of the High Court as directed by the Chief Justice.

**15.** Unless the Chief Justice and the Judges present at Cuttack shall, in any special case, otherwise direct no applicant shall be admitted to the roll of the Advocates of the Court until he has satisfied the Chief Justice and the Judges that he has competent knowledge of Oriya.

**16.** The Registrar shall keep the roll of the Advocates enrolled in this Court Advocates of the Court shall take precedence among themselves according to the date of call to the Bar or of first enrolment as an Advocate or Vakil in any High Court, whichever date is earlier.

17. The above rules should come into force at once. Admission made prior to these rules coming into operation shall be deemed as if made under these rules. But the Advocates enrolled after the 25th July 1948 who have not yet paid the Bar Council's fees shall pay the same to the Chairman or Vice-Chairman of Bar Council within fifteen days of the receipt of the information to that effect from the Secretary.

In case of failure of such payment, the Council will move the Court for passing such orders as the Court may deem proper after hearing both sides, if necessary.

18. The High Court may, in special cases, exempt any candidate from all or any of the requirements of the rules of this Chapter and on such exemption being granted the said candidate shall be deemed to have complied with the rules.

**(G) Rules under Section 15 (b) of the Indian Bar Councils Act, 1926**

1. An Advocate, who is not enrolled in the roll of Advocates in the High Court of Judicature, Orissa but is enrolled in the roll of Advocates of any other High Court in India, may appear and plead in a suit, appeal or other proceedings in the High Court of Judicature, Orissa, with the special permission of the Hon'ble Chief Justice, previously obtained on an application made in writing for the purpose, and provided there be with him in such suit, appeal or proceeding at least one Advocate of the High Court of Judicature, Orissa. Except as provided, no Advocate whose name is not borne on the roll of Advocates of the High Court of Judicature, Orissa, may appear and plead in any proceeding before that Court."

**(H) Miscellaneous**

**Rules under Section 15 (e) of the Indian Bar Councils Act, 1926 for the investment and management of the fund of the Bar Council**

1. An account shall be opened in the Imperial Bank, Cuttack Branch, in the name of the Chairman of the Bar Council of the Orissa High Court.

2. (a) All moneys received by the Secretary shall be sent to the Imperial Bank of India, Cuttack Branch and all expenses above twenty rupees shall be paid by cheques drawn on the said Bank.

(b) Every cheque on the Bank shall be signed by the Chairman or Vice-Chairman and the Secretary.

(c) The Secretary shall maintain a true account of all income and expenditure together with proper vouchers and the account shall be audited every year by such agency as the Bar Council may determine.

**(I) Rules relating to professional conduct of Advocates made under Section 15 (a) of the Indian Bar Council Act, 1926**

1. When more Advocates than one are engaged in a case on one and the same side, it shall be the duty of each one of them to see that his colleagues are paid their respective fees

for work already done; provided always that the scale of fees shall have been settled in writing.

2. Unless requested by his client to advise on the point no Advocate should recommend the engagement of a particular Advocate as his senior or junior in the case.

3. No Advocate shall, except as otherwise provided in these rules, without reasonable cause neglect to appear in a case in which he has already received his full fee.

4. If, for any reason an Advocate finds that he will not be able to work in a case in which he has already been paid his fee, it shall be his duty to give timely information of the fact to the client concerned and to return the fee, or he may, by previous agreement with his client, confide the work to his junior for a fixed portion of his own fee, the balance being returned to the client. But, if, on account of the shortness of time or for any other reasonable case, it is not possible to give such information, he shall transfer the brief to another Advocate of a standing and status in the profession similar or nearly similar to his own and pay him the fee already received.

5. No Advocate shall stipulate with his client for the payment of a present over and above his actual fee in case of success; nor shall he exact, or attempt to exact, a supplementary fee at the last moment, or absent himself from the case when such fee is not paid.

6. (a) An Advocate may charge a fresh fee for arguing on fresh evidence taken, or ordered to be taken, or on the return of a finding on remand by a superior Court and, also for arguing on a reference to a third Judge, or to a Full Bench, or to a Division Bench by a single Judge.

(b) Where a case has been remitted back to a lower Court by an appellate or revisional Court for any purpose and Advocate who appeared for a party at the earlier stages of the case is not bound to appear at stages subsequent to the remand without a fresh fee.

7. No Advocate shall appear before or against a local authority, body or association of which he is a member.

8. It is undesirable that any Advocate should abuse his relationship with the presiding Judge or Officer of a Court for the purpose of advancing his practice.

9. No Advocate shall accept employment in any legal business through a person who makes or has made a demand or request for a commission upon the Advocate's fee or has been proclaimed a tout, nor shall he do anything by way of advertising or touting for business.

10. No Advocate shall tender or give any gratification or in any way consent to the retention out of any fee paid or payable to him for his services of any gratification, for procuring or having procured the employment in any legal business of himself or any other Advocate nor shall he directly or indirectly procure or attempt to procure the employment of

himself or any other Advocate through or by the intervention of any person to whom any remuneration for obtaining such employment has been given or agreed or promised to be so given.

**11.** (1) An Advocate who has accepted a retainer from a party shall not accept the retainer or brief offered by the opposite-party unless he has given the former reasonable notice and that party has defaulted in giving him a brief within a reasonable time; and in case of such default the retainer shall be forfeited.

(2) A general retainer is a document in writing in no particular form, but stating the intention of the party delivering the retainer of retaining the services of the Advocate in all litigations in which the party is or may be involved and the retainer is said to be accepted by the Advocate by his accepting a nominal fee of eighty-five rupees paid by the party on delivery of the retainer.

(3) A special retainer is effected by the acceptance of a nominal fee of thirty-four rupees and when accepted has the effect of retaining the Advocate's services in a named litigation or proceeding.

(4) A general or special retainer on behalf of a Company, corporate body or Society as such shall not operate as retainer on behalf of any member, official or servant in his individual capacity.

**12.** No Advocate shall accept a retainer if he knows or has reason to believe that he is likely to be a witness other than a purely formal witness or that his own conduct is likely to be impugned in such case or proceeding.

**13.** If an Advocate accepts a brief in such case or proceeding is referred to in the last preceding rule without knowing or having reason to believe that he is likely to be a witness other than a purely formal witness or that his own conduct is involved in the case and if at any subsequent stage such fact comes to his knowledge he shall at once retire from the case.

**14.** An Advocate shall not accept a retainer or brief in a case in which he has acted in a judicial or quasi-judicial character, e.g. as a commissioner or arbitrator.

**15.** In the absence of instructions to the contrary from his first client an Advocate may act, appear for or advise the opposite-party in a subsequent or other legal proceeding which is not directly connected with, or in continuation of the first proceeding.

**16.** These rules are not exhaustive of the subject of professional etiquette, even as regards the specific matters with which they deal.

**APPENDIX A**

**Government of India, Ministry of Law**

**(Reforms)**

**NOTIFICATION**

*New Delhi, 30th April 1948*

**No. S.O. 10 -The following order made by the Governor General, is published for general information.**

**The Orissa High Court Order, 1948**

Whereas the Orissa Legislative Assembly have on the third day of March 1948, presented an address to the Governor of Orissa for submission to the Governor-General that a High Court be constituted for the Province of Orissa and the said Address has been submitted to the Governor General;

Now, therefore, in the exercise of the powers conferred by sub section (1) of section 229 of the Government of India Act; 1935, as adopted by the India Provisional Constitution (Amendment) Order, 1948, the Governor-General is pleased to make the following order –

1. (1) This Order may be cited as the Orissa High Court Order, 1948.

(2) It shall come into force on the date of its publication in the Gazette of India.

2. (1) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order "the Act" means the Government of India Act, 1935, as for the time being in force in the Dominion of India.

3. (1) As from the fifth day of July 1948 (hereinafter referred to as "the prescribed day") there shall be a High Court for the Province of Orissa which shall be a court of record and shall consist of a Chief Justice and such other Judges as the Governor-General may from time to time, whether before or after the prescribed day appoint in accordance with the provisions of section 220 of the Act:

Provided that any appointment so made before the prescribed day shall not take effect till the prescribed day.

(2) The said High Court is hereinafter referred to as "the High Court of Orissa."

4. The High Court of Orissa shall have, in respect of the territories for the time being included in the Province of Orissa, all such original, appellate and other jurisdiction as under the law in force immediately before the prescribed day is exercisable in respect of the said territories or any part thereof by the High Court in Patna.

**5.** (1) The High Court of Orissa shall have the like power to approve, admit, enroll, remove and suspend advocates and attorneys and to make rules with respect to advocates and attorneys as are under the law in force immediately before the prescribed day exercisable by the High Court in Patna:

(2) The right of audience in the High Court of Orissa shall be regulated in accordance with the like principles as immediately before the prescribed day are in force with respect to the right of audience in the High Court in Patna.

Provided that subject to any rule made or direction given by the High Court of Orissa in exercise of the powers conferred by this Article any person who immediately before the prescribed day, is an advocate entitled to practise or an attorney entitled to act in the High Court in Patna shall be recognised as an advocate or an attorney entitled to practise or to act, as the case may be, in the High Court of Orissa.

**6.** Subject to the provisions of this Order, the law in force immediately before the prescribed day with respect to practice and procedure in the High Court in Patna, shall, with the necessary modifications, apply in relation to the High Court of Orissa and accordingly that High Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the prescribed day exercisable by the High Court in Patna:

Provided that any rules or orders which are in force immediately before the prescribed day with respect to practice and procedure in the High Court in Patna shall, until varied or revoked by rules or orders made by the High Court of Orissa apply with the necessary modifications in relation to practice and procedure in the High Court of Orissa as if made by that Court.

**7.** (1) The High Court of Orissa shall have a seal of such form and design as the Chief Justice may direct.

(2) The law in force immediately before the prescribed day with respect to the custody of the seal of the High Court in Patna shall, with the necessary modifications, apply with respect to the custody of the seal of the High Court of Orissa.

**8.** The law in force immediately before the prescribed day with respect to the form of writs and other processes used, issued or awarded by the High Court in Patna shall, with the necessary modifications apply with respect to the form of writs and other processes used, issued or awarded by the High Court of Orissa.

**9.** The law in force immediately before the prescribed day relating to the powers of the Chief Justice, single Judge and division courts of the High Court in Patna and with respect to all matters ancillary to the exercise of those powers, shall, with the necessary modifications apply in relation to the High Court of Orissa.

10. The High Court of Orissa and the Judges and division courts thereof shall sit at such places in the Province of Orissa as the Chief Justice may with the approval of the Governor of Orissa appoint.

11. The law in force immediately before the prescribed day relating to appeals to His Majesty in Council or to the Federal Court from the High Court in Patna and the Judges and division courts thereof shall with the necessary modifications apply in relation to the High Court of Orissa.

12. (1) Except as herein after provided the High Court in Patna shall, on and after the prescribed day have no jurisdiction in respect of the Province of Orissa.

(2) Notwithstanding anything contained in paragraph (1) of this Article or in Article 4: -

(a) the High Court in Patna shall have the like jurisdiction to hear and determine any appeal from, or to review any order of a Judge of that High Court, whether on its original or appellate side, as if this order had not been made, and the High Court of Orissa shall have no jurisdiction to hear or determine any such appeal or to review any such order; and

(b) the High Court in Patna shall have the like jurisdiction to hear and dispose of any application for leave to appeal to His Majesty in Council or the Federal Court from an order of that High Court as it would have if this order had not been made, and the High Court of Orissa shall have no jurisdiction to hear or dispose of any such application.

(3) All proceeding pending in the High Court in Patna immediately before the prescribed day, other than proceedings with respect to which that High Court retains jurisdiction by virtue of paragraph (2) of this Article, shall, where the Court of origin is situated in the Province of Orissa, stand transferred by virtue of this order to the High Court of Orissa.

(4) Any order made by the High Court in Patna –

(a) in any proceedings with respect to which that High Court retains jurisdiction by virtue of paragraph (2) of this Article, or

(b) before the prescribed day in any proceedings transferred to the High Court of Orissa by virtue of paragraph (3) of this Article,

shall for all purposes have effect, not only as an order of the High Court in Patna, but also as an order made by the High Court of Orissa.

(5) For the purposes of this Article, proceedings shall be deemed to be pending in a Court until that Court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings.



(6) References in this Article to a High Court shall be construed as including references to a Judge or division court thereof and references to an order made by the court or a Judge shall be construed as including references to a sentence, judgement or decree passed or made by that court or judge.

13. Nothing in this Order shall prejudice the application to the High Court of Orissa of any relevant provisions of the Act, and this Order shall have effect subject to any provision that may be made on or after the prescribed day with respect to that High Court by any legislature or authority having power to make such provision.

MOUNTBATTEN OF BURMA  
Governor General

-----

K. V. K. SUNDARAM  
Secretary

**APPENDIX B**

**Ministry of Law**

**(Reforms)**

**NOTIFICATION**

*New Delhi, the 8th June 1948*

No. S. O. 14 – The following order made by the Governor General, is published for general information:-

**The Orissa High Court (Amendment) Order, 1948**

In exercise of the powers conferred by sub-section (1) of section 229 of the Government of India Act, 1935, the Governor-General is pleased to make the following order: -

1. (1) This order may be cited as the Orissa High Court (Amendment) Order, 1948.

(2) It shall come into force at once.

2. In clause (1) of Article 3 of the Orissa High Court Order, 1948 for the words "fifth day of July" the words "twenty-sixth day of July" shall be substituted.

**MOUNTBATTEN OF BURMA**

Governor-General

## APPENDIX C

### Letters Patent constituting the High Court of Judicature at Patna

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the seas King, Defender of the Faith, Emperor of India. To all whom these presents shall come, greetings. Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth years of the Reign of Her late Majesty Queen Victoria, and called the Indian High Courts Act, 1861, it was, amongst other things enacted, by section one, that it should be lawful for her Majesty by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the presidency of Fort William;

and, by section two, that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act was declared;

and by section eight, that upon the establishment of such High Court as aforesaid the Supreme Court and the Court of Sadar Diwani Adalat and Sadar Nizamat Adalat at Calcutta, in the said Presidency, should be abolished;

and, by section nine, that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial, jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original, civil and criminal jurisdiction beyond the limits of the presidency town, as might be prescribed thereby; and that, save as by such Letters Patent might be otherwise directed, and subject and without prejudices to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercised all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same presidency abolished under the said Act at the time of the abolition of such last mentioned Courts:

And whereas, it was further declared by section sixteen of the said recited Act that it should be lawful for us by Letter Patent to erect and establish a High Court of Judicature in and for any portion of territories within our Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the presidencies of Fort William in Bengal, of Madras, and of Bombay, as we from time to time might think fit and appoint; and that it should be lawful for us by such Letters Patent, to confer on any new High Court which might be so established any such jurisdiction, powers and authority as under the same Act was authorised to be conferred in or would become vested in the High Court established in any of the said Presidencies and that, subject to the directions of the Letters Patent all, the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of

such Courts, and to the Governor-General or Governor of the Presidency in which such High Courts were established, should as far as circumstances might permit, be applicable to any new High Court which might be established in the said territories and to the Chief Justice and other Judges thereof, and to the persons administering the Government of the said territories:

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the twenty-fifth Year of Her Reign in the year of our Lord one thousand eight hundred and sixty-two did erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and did constitute that Court to be a Court of Record.

And whereas Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-eighth day of December, in the Twenty-ninth Year of Her Reign in the Year of Our Lord one thousand eight hundred and sixty-five, did revoke the said Letters Patent bearing date the Fourteenth day of May in the Year of Our Lord one thousand eight hundred and sixty-two, but notwithstanding that revocation did continue the said High Court of Judicature at Fort William in Bengal and declared that the Court should continue to be a Court of Record :

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the Kingdom of Great Britain and Ireland, bearing date at Westminster the Seventeenth date of March in the Twenty-ninth year of Her Reign in the Year of Our Lord one thousand eight hundred sixty-six, did erect and establish a High Court of Judicature for the North-Western Provinces which said Court is situated at Allahabad in the Province of Agra and is now called the High Court of Judicature at Allahabad, and did constitute that Court to be a Court of Record :

And whereas by an Act of Parliament passed in the First and Second Years of Our Reign, and called the Indian High Courts Act, 1911, it was enacted, amongst other things, by section one, that the maximum number of Judges of a High Court of Judicature in India, including the Chief Justice, should be twenty:

And by section two, that our power under section sixteen of the Indian High Courts Act, 1861, might be exercised from time to time, and that a High Court might be established under the said Section sixteen in any portion of the territories within our Dominions in India whether or not included within the limits of the local jurisdiction of another High Court; and that, where such a High Court was established in any part of such territories included within the limits of the local jurisdiction of another High Court, it should be lawful for Us by Letters Patent to alter the local jurisdiction of that other High Court, and to make such incidental, consequential and supplemental provisions as might appear to be necessary by reason of the alteration of those limits:

And whereas the said Indian High Court Acts, 1861 and 1911, have been repealed and re-enacted by an Act of Parliament passed in the Fifth and Sixth years of Our Reign, and called the Government of India Act, 1915.

And whereas certain territories formerly subject to and included within the limits of the Presidency of Fort William in Bengal were, by proclamation made by the Governor-General of India on the twenty-second day of March in the year of our Lord one thousand nine hundred and twelve, constituted a separate province, called the province of Bihar and Orissa, and are now governed by a Lieutenant Governor in Council.

1. Now know ye that We upon full consideration of the premise, and of Our special grade, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, Our Heirs and Successors, erect and establish, for the province of Bihar and Orissa aforesaid with effect from the date of the publication of these presents in the Bihar and Orissa Gazette, a High Court of Judicature which shall be called the High Court of Judicature at Patna, and We do hereby constitute the said Court to be a Court of Record:

2. And We do hereby appoint and ordain that the High Court of Judicature at Patna shall, until further or other provision be made by Us, or Our Heirs and Successors, in that behalf in accordance with section one hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Edward Maynard Des Champs Chamier, Knight, and the six other Judges being Saiyid Shurfuddin, Esquire ; Edmund Pelly Chapman Esquire, Basant Kumar Mullick, Esquire, Francis Reginald Roe, Esquire, the Hon'ble Cecil Atkinson, and Jowala Persad, Esquire, being respectively qualified as in the said Act is declared.

3. And we do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Patna, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor in Council may commission to receive it:

"I, A.B., appointed Chief Justice (or a Judge) of the High Court of Judicature at Patna, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgement."

4. And We do hereby grant ordain and appoint that the High Court of Judicature at Patna shall have and use as occasion may require, a seal bearing a device and impression of Our Royal arms, within an exergue or label surrounding the same, with this inscription, "The Seal of the High Court at Patna" and we do further grant, ordain and appoint that the said Seal, shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of the Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section one hundred and five of the Government of India Act, 1915; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of The said seal be committed is vacant, the said High Court shall be, and is hereby, authorised and empowered to demand, seize and take the said seal from any person or persons whomsoever by what ways and means so ever the same may have come to his, her or their possession.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Patna shall run and be in the name and style of Us, or of Ours Heirs and Successors, and shall be sealed with the seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Patna from time to time as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor in-Council, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure, and we do hereby, for Us, Our Heirs and Successors, give, grant, direct and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor-in-Council, subject to the control of the Governor-General-in-Council, may approve of: Provided always, and it is Our will and pleasure, that all and every the offices and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor-General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

#### **Admission of Advocates, Vakils and Attorneys**

7. And We do hereby authorize and empower the High Court of Judicature at Patna to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court may seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

8. And We do hereby ordain that the High Court of Judicature at Patna shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorney-at-law; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf of a co-suitor.

#### **Civil Jurisdiction of the High Court**

9. And We do further ordain that the High Court of Judicature at Patna shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being of falling within the jurisdiction of any court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to

that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a Judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declared that the case is a fit one for appeal: but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as herein after provided.

11. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Courts of the Province of Bihar and Orissa and from all other Courts subject to the superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

12. And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the province of Bihar and Orissa and that which was vested in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents.

#### **Law to be administered by the High Court**

13. And We do further ordain that with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Patna in the exercise of its extraordinary original civil jurisdiction such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Patna to each case coming before it in the exercise of the appellate jurisdiction, such law or equity and rule of good conscience

shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

### **Criminal Jurisdiction**

15. And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents.

16. And We do further ordain that the High Court of Judicature at Patna in the exercise of its ordinary original criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the High Court of Judicature at Patna shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and there upon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgement and sentence as to the said High Court may seem right.

20. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Criminal Courts of the Province of Bihar and Orissa, and from all other Courts subject to the superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court Judicature at Patna by any law made by competent legislative authority for India.

21. And We do further ordain that the High Court of Judicature at Patna shall be a court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases, referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa who were, immediately before the publication of these presents authorised to refer cases to the High Court of Judicature at Fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were immediately before the

publication of these presents, subject to, reference to or revision by the High Court of Judicature at Fort William in Bengal.

22. And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary court to the jurisdiction of some other officer or Court.

### **Criminal Law**

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a court of appeal, reference or revision, charged with any offence for which provision is made by Act, No. XLV of 1860, called the "Indian Penal Code" or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act, or Acts, and not otherwise.

### **Admiralty Jurisdiction**

24. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such civil and maritime jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as was so exercisable by the High Court of Judicature at Fort William in Bengal.

25. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such criminal jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, or otherwise in connection with maritime matter or matters of prize.

### **Testamentary and Intestate Jurisdiction**

26. And We do further ordain that the High Court of Judicature at Patna Shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Province of Bihar and Orissa by the High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate; Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probate and letters of administration.



### **Matrimonial Jurisdiction**

27. And We do further ordain that the High Court of Judicature at Patna shall have jurisdiction, within the Province of Bihar and Orissa, in matters matrimonial between our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any court not established by Letters Patent within the said Province which is lawfully possessed of that jurisdiction.

### **Powers of Single Judges and Division Courts**

28. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna, in the exercise of its original or appellate jurisdiction, may be performed by any judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there be a majority, but if the Judges be equally divided, 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 and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

### **Civil Procedure**

29. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil Procedure being an Act, No V of 1908, passed by the Governor-General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

### **Criminal Procedure**

30. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure being an Act No. V of 1898, passed by the Governor-General in Council or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

### **Appeals to Privy Council**

31. And We do further ordain that any person or persons may appeal to us, Our Heirs and Successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Patna made on appeal, and from any final judgement, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents: provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgement decree or order involves directly or indirectly some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgement, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to us, Our Heirs or Successors, in our or their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made. respecting appeals to Ourselves in Council from the courts of the Province of Bihar and Orissa, except so far as the said existing rules and orders respectively are hereby varied and subject also to such further rules and orders as we may, with the advice of Our Privy Council, hereafter make in that behalf.

32. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna, at its discretion on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court in any such proceedings as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our Heirs and Successors, in our or their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees, and orders.

33. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Patna, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgement. order or sentence to appeal to Us, Our Heirs or Successors, in Council, provided the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

34. And we do further ordain that, in all cases of appeal made from any judgement, decree, order or sentence of the High Court of Judicature at Patna to Us, Our Heirs or Successors, in our or their Privy Council, such High Court shall certify and transmit to Us, Our Heirs and Successors, in our or their Privy Council, a true and correct copy of all evidence, proceedings, judgements, decrees and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us,

Our Heirs and Successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the Judgment or determination appealed against. And we do further ordain that the said High Court shall, in all cases of appeal to us, Our Heirs or Successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our Heirs or Successors, in Our or their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree, or decreatal orders, or other order or rule of the said High Court, should or might have been executed.

#### **Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court**

35. And we do further ordain that, unless the Governor General in Council otherwise directs, one or more Judges of the High Court of Judicature at Patna shall visit the Province of Orissa, by way of Circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Province the jurisdiction and power vested in the said High Court by or under the Government of India (Constitution of Orissa) Order, 1936: Provided always that such visit shall be made not less than four times in every year, unless the Chief Justice, with the approval of the Government of Bihar in Council otherwise directs. Provided also that the said High Court shall have power from time to time to make rules, with the previous sanction of the Governor of Bihar in Council, for declaring what cases or classes of cases arising in the Province of Orissa shall be heard at Patna and not in that province, and that the Chief Justice may, in his discretion, order that any particular case arising in the Province of Orissa shall be heard at Patna or in that Province. Provided further that the approval and sanction of the Governor of Bihar in Council under the foregoing provisos shall be subject to the control of the Governor-General in Council.

36. And we do further ordain that whenever it appears to the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by under the or Government of India Act, 1915, vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of Circuit, one or more Judges of the Court shall visit such place or places accordingly.

37. And we do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or 36th clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

#### **Delegation of Duties to Officers**

38. The High Court of Judicature at Patna may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

#### **Cessation of jurisdiction of the High Court of Judicature at Fort William in Bengal**

39. And we do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents and that all proceedings pending in the former Court on that date in reference to any such matter shall be transferred to the latter Court:

Provided first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction –

(a) in all proceedings pending in that Court on the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by the court, or in which the validity of any such decree or order is directly in question; and

(b) in all proceedings [not being proceedings referred to in paragraph (a) of this clause] pending in that Court on the date of the publication of these presents, under the 13th, 15th, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th, or 35th clause of the Letters Patent bearing date at Westminster the twenty-eighth day of December, in the year of our Lord One thousand eight hundred and sixty-five relating to that Court; and

(c) in all proceedings instituted in that Court, on or after the date of the publication of these presents, with reference to any decree or order passed or made by that Court:

Provided, secondly, that, if any question arises as to whether any case is covered by the first proviso to this clause the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final.

#### **Calls for records, etc., by the Government**

40. And it is our further will and pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant-Governor in Council for records, returns and statements, in such form and manner as he may deem proper.

#### **Power of Indian Legislature**

41. And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council, and also of the Governor General in Council under section seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.

In witness where of We have caused these Our Letters to be made Patent.

Witness Ourselves at Westminster the Ninth day of February in the year of Our Lord One thousand nine hundred and sixteen and in the sixth Year of Our reign.

By Warrant under the King's  
Sign Manual  
(Signed) Schuster

## APPENDIX D

### The Constitution of India

#### PART III

##### Remedies for enforcement of rights conferred by this Part

**32.** (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus mandamus, prohibition, quo warranto and certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

#### PART V

#### CHAPTER IV

**129. Supreme Court to be a Court of record** – The Supreme Court shall be Court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

**130. Seat of Supreme Court** – The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

**131. Original Jurisdiction of the Supreme Court** – Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute –

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(e) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to –

(i) a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution and has, or has been, continued in operation after such commencement;

(ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

### **132. Appellate Jurisdiction of Supreme Court in appeals from High Courts –**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order'

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court, on any other ground.

EXPLANATION – For the purpose of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

### **133. Appellate Jurisdiction of Supreme Court in appeals from High Courts in regard to Civil matters –**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies –

(a) that the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law, or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court, and, where the judgment, decree, or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

#### 134. Appellate Jurisdiction of Supreme Court in regard to Criminal matters –

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies that the case is a fit one for appeal to the Supreme Court :

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and here appeals from any judgment, final order, or sentence in a criminal proceeding of High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

**135. Jurisdiction and powers of the federal Court under existing Law to be exercisable by Supreme Court** – Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and power in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

**136. Special leave to appeal by the Supreme Court** – (1) Notwithstanding anything in this Chapter, the Supreme Court, may in its discretion, grant special leave to appeal from any judgment decree determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to Armed Forces.

**137. Review of judgments or orders by the Supreme Court** – Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

**138. Enlargement of the Jurisdiction of the Supreme Court –**

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

**139. Conferment on the Supreme Court of Powers to issue certain writs**–Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

**140. Ancillary Powers of Supreme Court** – Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under Constitution.

**141. Law declared by Supreme Court to be binding on all Courts** – The law declared by the Supreme Court shall be binding on all Courts within the territory of India.

**142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. –**

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf if so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

**143. Power of President to consult Supreme Court** – (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a



nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court, may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in clause (1) of the proviso to article 131, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

**144. Civil and judicial authorities to act in aid of the Supreme Court** – All authorities, civil and judicial, in the territory of India Shall act in aid of the Supreme Court.

**145. Rules of Court, etc.** – (1) Subject to the provisions of any law made by Parliament the Supreme Court may from time to time, with the approval of the President make rules for regulating generally the practice and procedure of the Court including –

- (a) rules as to the persons practising before the Court;
- (b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered ;
- (c) rules as to the proceedings in the Court for the enforcement of any of the right conferred by Part III;
- (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
- (e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;
- (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
- (g) rules as to the granting of bail
- (h) rules as to the stay of proceedings:
- (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
- (j) rules as to the procedure for inquiries referred to in clause (1) of article 317;

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judge and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Court save with concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgement of opinion.

**146. Officers and servants and the expenses of the Supreme Court –**

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

**147.** In this Chapter and Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any order in Council or

order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

\* \* \* \* \*

PART VI  
CHAPTER V

**215. High Courts to be Courts of Record** – Every High Court shall be a Court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

\* \* \* \* \*

**225. Jurisdiction of Existing High Courts** – Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the, jurisdiction of, and the law administered in, any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such Jurisdiction.

**226. Power of High Courts to issue certain writs-** (1) Notwithstanding anything in article 32, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

**227. Power of superintendence over all Courts by the High Courts** – (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision the High Court may

—

(a) call for returns from such courts :

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

**228. Transfer of Certain cases to High Court** – If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

(a) either dispose to the case itself, or

(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

**229. Officers and servants and the expenses of High Courts** – (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the court as he may direct:

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions require the approval of the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidate Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

**230. Extension of or exclusion from the jurisdiction of High Courts** – Parliament may by law-

(a) extend the jurisdiction of a High Court to, or

(b) exclude the jurisdiction of a High Court from, any State specified in the First Schedule other than or any area not within, the State in which the High Court has its principal seat.

**231. Restrictions on the Powers of the Legislatures of States to make laws with respect to jurisdiction of a High Court in a State having jurisdiction outside that State –**

Where a High Court exercises jurisdiction in relation to any area outside the State in which it has its principal seat, nothing in this Constitution shall be construed-

(a) as empowering the Legislature of the State in which the Court has its principal seat to increase, restrict or abolish that jurisdiction;

(b) as empowering the Legislature of a State specified in Part A or Part B of the First Schedule in which any such area is situate, to abolish that jurisdiction; or

(c) as preventing the Legislature having power to make laws in that behalf for any such area from passing, subject to the provisions of clause (b), such laws with respect to the jurisdiction of the Court in relation to that area as it would be competent to pass if the principal seat of the Court were in that area.

**232. Interpretation –** Where a High Court exercises jurisdiction in relation to more than one State specified in the First Schedule or in relation to a State and an area not forming part of the State-

(a) references in this Chapter to the Governor in relation to the Judges of a High Court shall be construed as references to the Governor of the State in which the court has its principal seat;

(b) the reference to the approval by the Governor of rules, forms and tables for subordinate court shall be construed as a reference to the approval thereof by the Governor or the Rajpramukh of the State in which the subordinate court is situate, or if it is situate in an area not forming part of any State specified in Part A or Part B of the First Schedule, by the President ; and

(c) reference to the Consolidated Fund of the State shall be construed as references to the Consolidated Fund of the State in which the Court has its principal seat.

**SUPREME COURT RULES, 1966**

**SUPREME COURT OF INDIA**

NOTIFICATIONS

*New Delhi, 30<sup>th</sup> December 1965*

**G.S.R. 102-** The following is published for general information:

In exercise of the powers conferred by rule 1 of Order I of the Supreme Court Rules, 1966, the Hon'ble the chief Justice of India has been pleased to appoint the 1<sup>st</sup> day of March 1966, as the date from which the Supreme Court Rules, 1966 shall come into force.

[No . F. 10/65/S.C.M.J. (II)]

**G.S.R. 103-** The following is published for general information:

In exercise of the powers conferred by Article 145 of the Constitution, and all other powers enabling it in this behalf, the supreme Court hereby makes, with the approval of the President, the following rules, namely:-

## PART I - General

### ORDER I

#### INTERPRETATION, ETC.

1. (1) These rules may be cited as the Supreme Court Rules, 1966.

(2) They shall come into force on such date as the Chief Justice of India may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of these rules:

Provided that proceedings pending in the Supreme Court of any High Court in relation to appeals by virtue of certificates granted under, article 132(1), article 133(1) or article 135 of the Constitution shall, unless otherwise ordered by this Court, be governed by the rules in force prior to the appointed date, and all steps therein shall continue to be taken in accordance with the said rules.

2. (1) In these rules, unless the context otherwise requires-

- (a) 'advocate' means a person whose name is entered on the common roll maintained under section 20 of the Advocates Act, 1961 (25 of 1961);
- (b) 'advocate on record' means an advocate who is entitled under these rules to act as well as to plead for a party in the Court;
- (c) 'appointed day' means the date on which these rules shall come into force;
- (d) 'Chief Justice' means the Chief Justice of India and includes a Judge appointed under article 126 of the Constitution to perform the duties of the Chief Justice;
- (e) 'code' means the Code of Civil Procedure, 1908 (5 of 1908);
- (f) 'Constitution' means the Constitution of India;
- (g) 'Court ' and 'this Court' means the Supreme Court of India;
- (h) 'court appealed from' includes a tribunal or any other judicial body from which an appeal is preferred to the Court;
- (i) 'High Court' means-
  - (i) as respects anything done before the commencement of the Constitution, a High court within the meaning of section 219 of the Government of India Act, 1935; and
  - (ii) as respects anything done or to be done after the commencement of the Constitution, a High Court established by or recognised under the Constitution;
- (j) 'Judge' means a Judge of the Court;
- (k) 'judgment' includes decree, order, sentence or determination of any court, tribunal, judge or judicial officer;
- (l) 'prescribed' means prescribed by or under these rules;
- (m) 'record' in Part II of these rules means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before the Court at the hearing of the appeal;
- (n) 'Registrar' and 'Registry' means respectively the Registrar and Registry of the Court;
- (o) 'respondent' includes and intervener;

- (p) 'the rules' and 'rules of Court' mean these rules and include the forms appended to these rules;
  - (q) 'senior advocate' means any advocate so designated under sub-section (2) of section 16 of the Advocates Act, 1961 (25 of 1961), and all such advocates whose names were borne on the roll of the senior advocates of the Court immediately before the commencement of Chapter III of the Advocates Act, 1961;
  - (r) 'Taxing Officer' means the officer of the Court whose duty it is to tax costs of proceedings in the Court.
2. The General Clauses Act, 1897 (10 of 1897), shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.
  3. 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.
  4. 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 day from which the said period is to be reckoned shall be excluded and if the last day expires on a day when the Court is closed, that day and any succeeding days on which court remains closed shall also be excluded.

## **ORDER II**

### **OFFICES OF THE COURT: SITTINGS AND VACATION, ETC.**

1. Except during vacation and on Saturdays and holidays, the offices of the Court, shall subject to any order by the Chief Justice, be open daily from 10 A.M to 5 P.M., but no work, unless of an urgent nature, shall be admitted after 4:30 P.M.
2. The offices of the Court shall, except during vacation, be open on Saturdays from 10-30 A.M., to 1-30 P.M., but no work, unless of an urgent nature, shall be admitted after 12-30 P.M.
3. Except on Saturdays and holidays, the offices of the Court shall be open during vacation at such times as the Chief Justice may direct.
4. (1) The Court shall sit in two terms annually, the first commencing from the termination of the summer vacation and ending with the day immediately preceding such day in December as the Court may fix for the commencement of the Christmas and New Year holidays and the second commencing from the termination of the Christmas and New Year holidays and ending with the commencement of the summer vacation.
  - (2) The period of the summer vacation shall not exceed ten weeks.
  - (3) The length of the summer vacation and the number of holidays shall be such as may be fixed by the Chief Justice and notified in the Official Gazette so as not to exceed one hundred and three days (excluding Sundays not falling in the vacation and during holidays).
5. The Court shall not ordinarily sit on Saturdays, nor on any other days notified as Court holidays in the Official Gazette.

6. The Chief Justice may appoint one or more Judges to hear during summer vacation or winter holidays all matters of an urgent nature which under these rules may be heard by a Judge sitting singly, and, whenever necessary, he may likewise appoint a Division Court for the hearing of urgent cases during the vacation which require to be heard by a Bench of Judges.

### **ORDER III**

#### OFFICERS OF THE COURT, ETC.

1. The Registrar shall have the custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules.
2. The Chief Justice may assign, and the Registrar may, with the approval of the Chief Justice, delegate, to a Deputy Registrar or Assistant Registrar, any functions required by these rules to be exercised by the Registrar.
3. In the absence of the Registrar, the Deputy Registrar may exercise all the functions of the Registrar.
4. The official seal to be used in the Court shall be such as the Chief Justice may from time to time direct, and shall be kept in the custody of the Registrar.
5. Subject to any general or special directions given by the Chief Justice, the seal of the Court shall not be affixed to any writ, rule, order, summons or other process save under the authority in writing of the Registrar, or Deputy Registrar.
6. The seal of the Court shall not be affixed to any certified copy issued by the Court save under the authority in writing of the Registrar or of a Deputy Registrar or Assistant Registrar.
7. (1) The Registrar shall keep a list of all cases pending before the Court, and shall, at the commencement of each term, prepare and publish on the notice board of the Court a list of all cases ready for hearing in each class separately, to be called the "ready list". The cases in the "ready list" shall be arranged yearwise in each class separately in the order of their registration, and the list shall be added to from time to time as and when fresh cases become ready for hearing.  
(2) Out of the "ready list" the Registrar shall publish on the notice board of the Court at the end of each month a list of cases to be heard during the following month. Subject to any general or special directions that may be given by the Chief Justice and subject to the orders of the Court and the other provision of these rules, the cases listed for hearing in the monthly list in each class shall be in the order in which the cases have been registered. From out of the monthly list, the Registrar shall publish at the end of each week a list of cases to be heard in the following week, as far as possible, in the order in which they appear in the monthly list, subject to the directions of the Chief Justice and of the Court, if any, and out of the weekly list shall publish at the end of each day a daily list of cases to be heard by the Court on the following day.
8. In addition to the powers conferred by other rules, the Registrar shall have the following duties and powers subject to any general or special order of the Chief Justice, namely:-



- (i) to require any plaint, petition of appeal, petition or other proceeding presented to the Court to be amended in accordance with the practice and procedure of the Court or to be represented after such requisition as the Registrar is empowered to make in relation thereto has been complied with;
  - (ii) to fix the date of hearing of appeals, petitions or other proceedings and issue notices thereof;
  - (iii) to settle the index in cases where the record is prepared in the Court;
  - (iv) to make an order for change of advocate on record with the consent of the advocate on record;
  - (v) to direct any formal amendment of record;
  - (vi) to grant leave to inspect and search the records of the Court and order the grant of copies of documents to parties to proceedings;
- and without interfering or dispensing with any mandatory requirement of these Rules-
- (vii) to allow from time to time on a written request any period or periods not exceeding twenty-eight days in aggregate for furnishing information or for doing any other act necessary to bring the plaint, appeal, petition or other proceeding in conformity with the rules and practice of the Court.

#### **ORDER IV**

#### **ADVOCATES**

1. Subject to the provisions of these rules only those advocates whose names are entered on the common roll maintained by the Bar Council of India under section 20 of the Advocates Act, 1961 (25 of 1961) shall be entitled to appear and plead before the Court:

Provided that the Court may, if for any special reason it thinks desirable to do so, permit any other person to appear before it in a particular case.

2. (a) The Chief Justice and the Judges may, with the consent of the advocate, designate an advocate as senior advocate if in their opinion by virtue of his ability, experience and standing at the Bar the said advocate is deserving of such distinction.

(b) A senior advocate shall not-

- (i) file a vakalatnama or act in any court or tribunal in India,
- (ii) appear without an advocate on record in the Court or without a junior in any other court or tribunal in India,
- (iii) accept instructions to draw pleadings or affidavits, advice on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior,

- (iv) accept directly from a client any brief or instructions to appear in any court or tribunal in India.

*Explanation:*

In this Order -

(i) 'acting' means filing an appearance or any pleadings or applications in any court or tribunal in India, or any act (other than pleading) required or authorised by law to be done by a party in such court or tribunal either in person or by his recognised agent or by an advocate or attorney on his behalf.

(ii) 'tribunal' includes any authority or person legally authorised to take evidence and before whom advocates are, by or under any law for the time being in force, entitled to practise.

(iii) 'junior' means an advocate other than a senior advocate.

(c) Upon an advocate being designated as a senior advocate, the Registrar shall communicate to all the High Courts and the Secretary to the Bar Council of India the name of the said Advocate and the date on which he was so designated.

3. Every advocate appearing before the Court shall wear such robes and costume as may from time to time be directed by the Court

4. Any advocate not being a senior advocate may, on his fulfilling the conditions laid down in rule 5, be registered in the Court as an advocate on record:

Provided that notwithstanding anything contained in rule 5, any advocate whose name was registered with the Registrar as an advocate on record immediately before the 8th day of September, 1962, shall be registered as an advocate on record.

5. No advocate shall be qualified to be registered as an advocate on record unless he-

(i) has undergone training for one year with an advocate on record approved by the Court, and has thereafter passed such tests as may be held by the Court for advocates who apply to be registered as advocates on record, particulars whereof shall be notified in the Official Gazette from time to time, provided however that an attorney shall be exempted from such training and test;

(ii) has an office in Delhi within a radius of 16 kilometers from the Court House and gives an undertaking to employ, within one month of his being registered as advocate on record, a registered clerk; and

(iii) pays a registration fee of twenty-five rupees

6. (a) An advocate on record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a vakalatnama duly executed by the party, be entitled

- (i) to act as well as to plead for the party in the matter and to conduct and prosecute before the Court all proceedings that may be taken in respect of the said matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review; and
- (ii) to deposit and receive money on behalf of the said party.

(b) No advocate other than an advocate on record shall be entitled to file an appearance or act for a party in the Court.

(c) Every advocate on record shall keep such books of account as may be necessary to show and distinguish in connection with his practice as an advocate on record-

- (i) moneys received from or on account of and the moneys paid to or on account of each of his clients; and
- (ii) the moneys received and the moneys paid on his own account,

(d) Every advocate on record shall, before taxation of the Bill of Costs, file with the Taxing Officer a certificate showing the amount of fee paid to him or agreed to be paid to him by his client.

7. Where an advocate on record ceases to have an office or a registered clerk or both as required by clause (ii) of rule 5, notice shall issue to such advocate to show cause before the Chamber Judge on a date fixed, why his name should not be struck off the register of advocates on record, and if the Chamber Judge makes such an order, the name of such advocate shall be removed from the register accordingly and the advocate shall thereafter cease to be entitled to act as an advocate on record.

8. Where an advocate on record is suspended or his name is removed from the common roll maintained under the Advocates Act, 1961 (25 of 1961), he shall, unless otherwise ordered by the Court, be deemed as from the date of the order of the State Bar Council or the Bar Council of India, as the case may be, to be suspended or removed from the register of advocates on record for the same period as is mentioned in the order of the State Bar Council or the Bar Council of India, as the case may be.

9. Any advocate on record may at any time by letter request the Registrar to remove his name from the register of advocates on record, absolutely or subject to his continuing to act as advocate on record in respect of all or any of the pending cases in which he may have

filed a vakalatnama, of which he shall file a list. The Registrar shall thereupon remove his name from the register of advocates on record, absolutely or subject as aforesaid.

10. No advocate other than an advocate on record shall appear and plead in any matter unless he is instructed by an advocate on record.

11. Every advocate on record shall notify to the Registrar the address of his office in Delhi and every change of such address, and any notice, writ, summons, or other document served on him or his clerk at the address, so notified by him shall be deemed to have been properly served.

12. (1) An advocate on record or a firm of advocates may employ one or more clerks to attend the Registry for presenting or receiving any papers on behalf of the said advocate or firm of advocates:

Provided that the clerk has been registered with the Registrar on an application in the prescribed form made to the Registrar for the purpose:

Provided further that the said clerk gives an undertaking that he shall attend the Registry regularly..

(2) Notice of every application for the registration of a clerk shall be given to the Secretary, Supreme Court Bar Association, who shall be entitled to bring to the notice of the Registrar within seven days of the receipt of the notice any facts which in his opinion may have a bearing on the suitability of the clerk to be registered.

(3) The Registrar may decline to register any clerk who in his opinion is not sufficiently qualified, or is otherwise unsuitable to be registered as such, and may for reasons to be recorded in writing, remove from the register the name of any clerk after giving him and the employer an opportunity to show cause against such removal. Intimation shall be given to the Secretary, Bar Association, of every order registering a clerk or removing a clerk from the register.

(4) Every clerk shall, upon registration, be given an identity card which he shall produce whenever required, and which he shall surrender when he ceases to be the clerk of the advocate or firm of advocates, for whom he was registered. Where a fresh identity card is required in substitution of one that is lost or damaged, a fee of three rupees shall be levied for the issue of the same.

(5) Every advocate on record shall have a registered clerk. No advocate may employ as his clerk any person who is a tout. 13. (1) The Registrar shall publish lists of persons proved to his satisfaction, by evidence of general repute or otherwise, habitually to act as touts to be known as 'list of touts' and may, from time to time, alter and amend such lists. A copy of every list of touts shall be displayed on the notice board of the Court..

*Explanation :*

In this Order –

(a) 'tout' means a person who procures, in consideration of any remuneration moving from any advocate or from any person acting on his behalf, the employment of such advocate in any legal business, or who proposes to or procures any advocate, in consideration of any remuneration moving from such advocate or from any person acting on his behalf, the employment of the advocate in such business, or who, for purposes of such procurement, frequents the precincts of the Court.

(b) the passing of a resolution by the Supreme Court Bar Association or by a High Court Bar Association declaring any person to be a tout shall be evidence of general repute of such person for the purpose of this rule.

(2) No person shall be included in the list of touts unless he has been given an opportunity to show cause against the inclusion of his name in such list. Any person may appeal to the Chamber Judge against the order of the Registrar including his name in such list.

(3) The Registrar may, by general or special order, exclude from the precincts of the Court all such persons whose names are included in the list of touts.

14. No person having an advocate on record shall file a vakalatnama authorising another advocate on record to act for him in the same case save with the consent of the former advocate on record or by leave of the Judge in Chambers, unless the former advocate on record is dead, or is unable by reason of infirmity of mind or body to continue to act.

15. Where a party changes his advocate on record, the new advocate on record shall give notice of the change to all other parties appearing.

16. No advocate on record may, without the leave of the Court, withdraw from the conduct of any case by reason only of the non-payment of fees by his client.

17. No person having an advocate on record shall be heard in person save by special leave of the Court.

18. No advocate on record shall authorise any person whatsoever, except another advocate on record, to act for him in any case.

19. Every advocate on record shall be personally liable to the Court for the due payment of all fees and charges payable to the Court.

20. Two or more advocates on record may enter into a partnership with each other, and any partner may act in the name of the partnership provided that the partnership is

registered with the Registrar. Any change in the composition of the partnership shall be notified to the Registrar.

21. Two or more advocates not being senior advocates or advocates on record, may enter into partnership and subject to the provisions contained in rule 9, anyone of them may appear in any cause or matter before the Court in the name of the partnership.

### **ORDER V**

#### **APPEALS UNDER SECTION 38 OF THE ADVOCATES ACT, 1961 (25 OF 1961)**

1. An appeal from an order made by the Disciplinary Committee of the Bar Council of India under section 36 or section 37 of the Advocates Act, 1961 (25 of 1961), shall be lodged in the Court within sixty days from the date on which the order complained of is communicated to the aggrieved person:

Provided that in computing the period of sixty days the time requisite for obtaining an authenticated copy of the order sought to be appealed from shall be excluded.

(2) The memorandum of appeal shall be in the form of a petition. It shall state succinctly and clearly all the relevant facts leading up to the order complained of, and shall set forth in brief the objections to the decision appealed from and the grounds relied on in support of the appeal. The Petition shall also state the date on which the order complained of was received by the appellant. The allegations of facts contained in the petition which cannot be verified by reference to the duly authenticated copies of the documents accompanying it shall be supported by affidavit of the appellant.

3. The petition shall be divided into paragraphs, numbered consecutively, each paragraph being confined to a distinct portion of the subject and shall be typed or cyclostyled or printed on one side of standard petition paper, demy-foolscap size, or on paper of equally superior quality.

4. The petition shall be made on a court-fee stamp of the value of ten rupees and shall be signed by the appellant, where the appellant appears in person, or by a duly authorised advocate on record on his behalf.

5. The petition of appeal shall be accompanied by:

- (i) an authenticated copy of the decision sought to be appealed from; and
- (ii) at least seven spare sets of the petition and the papers filed with it.

6. The Registrar after satisfying himself that the petition of appeal is in order, shall endorse thereon the date of presentation, register the same as an appeal and send a copy thereof to the Secretary, Bar Council of India, for record.

7. On the registration of the petition of appeal, the Registrar shall, after notice to the appellant or his advocate on record, if any, post the appeal before the Court for preliminary hearing and for orders as to issue of notice. Upon such hearing, the Court, if satisfied that no *prima facie* case has been made out for its interference, may dismiss the appeal, and, if not so satisfied, direct that notice of the appeal be issued to the Advocate-General of the State concerned or to the Attorney-General for India or to both and to the respondent.

8. Within ten days of the receipt by him of the intimation of admission of appeal under rule 7, the Secretary of the Bar Council of India shall transmit to the Court the entire original record relating to the case and such number of copies of the paper books prepared for the use of the Disciplinary Committee of the Bar Council of India as may be available.

9. Within fifteen days of the service of the notice of admission of appeal under rule 7 the Advocate-General of the State or the Attorney-General or the respondent may cause an appearance to be entered either personally or by an advocate on record on his behalf.

10. Where a respondent does not enter appearance within the time limited under rule 9, the appeal shall be set down for hearing *ex parte* as against him on the expiry of the period of one month from the receipt by him of the notice of the admission of appeal.

11. After the receipt of the original record the Registrar shall with all convenient speed, in consultation with the parties to the appeal, select the documents necessary and relevant for determining the appeal and cause sufficient number of copies of the said record to be typed or cyclostyled or printed at the expense of the appellant.

12. Unless otherwise ordered by the Court every appeal under this Order shall be made ready and if possible posted for hearing before the Court within four months of the registration thereof.

13. Where the appellant fails to take any steps in the appeal within the time fixed for the purpose by these rules or unduly delays in bringing the appeal to a hearing, the Registrar shall call upon him to explain his default and if no explanation is offered, or if the explanation offered is, in the opinion of the Registrar, insufficient, the Registrar may after notifying all the parties who have entered appearance, place the appeal before the Court for orders on the default, and the Court may dismiss the appeal for want of prosecution or give such directions in the matter as it may think fit and proper.

14. The costs of and incidental to all proceedings in the appeal shall be in the discretion of the Court.

## **ORDER VI**

### **BUSINESS IN CHAMBERS**

1. The powers of the Court in relation to the following matters may be exercised by the Registrar, namely:

(1) Applications for discovery and inspection

(2) Applications for delivery of interrogatories

(3) Applications for substituted service, or for dispensing with service of notice of the appeal on any of the respondents to the appeal under rule 10 of Order XV.

(4) Applications for time to plead for production of documents, and generally relating to the conduct of cause, appeal or matter save those coming under rule 2 of this Order.

(5) Applications for leave to take documents out of the custody of the Court.

(6) Questions arising in connection with the payment of court-fees.

(7) Applications by third parties for return of documents.

(8) Applications for grant of copies of records to third parties.

(9) Applications for the issue of a certificate regarding any excess court-fee paid under a mistake.

(10) Applications for requisitioning records from the custody of any court or other authority.

(11) Applications for condoning delay in paying deficit court-fees or delay in representation.

(12) Application for condonation of delay in filing statement of case, provided that where the Registrar does not think fit to excuse the delay, he shall refer the application to the Court for orders.

(13) Applications for appointment and for approval of a translator or interpreter.

(14) Applications for withdrawal of appeal by an appellant prior to his lodging the petition of appeal.

(15) Applications for substitution, except where the substitution would involve setting aside an abatement.

(16) Applications for production of documents outside Court premises.

(17) Applications for change or discharge of advocate on record.

(18) Applications to withdraw suits.

(19) Applications for payment into Court.

(20) Applications for payment out of Court of money or security, or interest or dividend on securities.

(21) Applications for extending returnable dates of warrants.

(22) Applications to appoint or discharge a next friend or guardian of a minor or a person of unsound mind and direct amendment of the record thereon.



(23) Applications for refund of security or part thereof, or for payment out of security amount.

2. The powers of the Court in relation to the following matters may be exercised by a Single Judge sitting in Chambers, namely:

- (1) Applications by advocate on record for leave to withdraw.
- (2) Applications for leave to compromise or discontinue an appeal in *forma pauperis*.
- (3) Applications for striking out or adding party or for intervention in a suit, appeal or other proceeding.
- (4) Applications for separate trials of causes of action
- (5) Applications for separate trials to avoid embarrassment.
- (6) Rejection of plaint.
- (7) Applications for setting down for judgment in default of written statement.
- (8) Applications for better statement of claim or defence.
- (9) Applications for particulars.
- (10) Applications for striking out any matter in a pleading.
- (11) Applications for amendment of pleading and for enlargement of time to amend any pleading.
- (12) Applications to tax bills returned by the Taxing Officer.
- (13) Applications for review of taxation.
- (14) Applications for enlargement or abridgement of time except where the time is fixed by the Court or relates to deposit of security and except applications for condonation of delay in filing special leave petitions,
- (15) Applications for issue of commissions.
- (16) Applications for security for costs,
- (17) Applications for assignment of security Bonds.
- (18) Questions arising in taxation referred by the Taxing Officer.
- (19) Applications for orders against clients for payment of costs.
- (20) Applications for taxation and delivery of bills of costs, and for delivery by an advocate of documents and papers.
- (21) Applications for registration of advocates as advocates on record.
- (22) Applications for leave to proceed in *forma pauperis*
- (23) Applications for grant of bail where the petitioner is confined in jail.
- (24) Applications for stay of execution of a sentence or order in criminal proceedings.
- (25) Applications by accused persons in custody for being produced before the Court at the hearing of the appeal.
- (26) Consent applications in interlocutory matters.
- (27) Applications by accused persons for engagement of advocate under rule 25 of Order XXI.
- (28) Fixing the remuneration of a guardian ad litem.

(29) Applications for directions regarding the preparation.

(30) Applications for dispensing with advocate's certificate in Review Applications.

(31) Applications to dispense with statements of case in criminal appeals.

3. Any person aggrieved by any order made by the Registrar under this order may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.

4. The Registrar may, and, if so directed by the Judge in Chambers, shall, at any time adjourn any matter and lay the same before the Judge in Chambers, and the Judge in Chambers may at any time adjourn any matter and lay the same before the Court.

## ORDER VII

### CONSTITUTION OF DIVISION COURTS AND POWERS OF A SINGLE JUDGE

1. Subject to the other provisions of these rules, every cause appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice.

2. Where in the course of the hearing of any cause, appeal or other proceeding the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it.

3 The Chief Justice may from time to time appoint a Judge to hear and dispose of all applications which may be heard by a Judge in Chambers under these rules.

4. During the vacation, the Vacation Judge sitting singly may, in addition to exercising all the powers of a Judge in Chambers under these rules, exercise the powers of the Court in relation to the following matters, namely:

(1) Application for special leave to appeal in urgent cases where interim relief is prayed for subject to the condition that the Vacation Judge shall not decide such a petition if it raises a substantial question of law as the interpretation of the Constitution.

(2) Applications for stay of execution of a decree or order or stay of proceedings in civil matters.

(3) Applications for transfer of cases under section 527 of the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Applications for stay of proceedings in criminal matters.

(5) Applications under article 32 of the Constitution of an urgent nature which do not involve a substantial question of law as to the interpretation of the Constitution.

(6) Issue of a rule *nisi* in urgent applications under article 32 of the Constitution which involve a substantial question of law as to the interpretation of the Constitution.

## ORDER VIII

## NOTICES OF MOTION

1. Except where otherwise provided by any statute, or prescribed by these rules, all applications which in accordance with these rules cannot be made in Chambers shall be made on motion after notice to the parties affected thereby

2. Where the delay caused by notice would or might entail serious hardship, the applicant may, pray an *ad-interimexparte* order in the notice of motion, and the Court, if satisfied upon affidavit or otherwise that the delay caused by notice would entail serious hardship may make an order *exparte* upon such terms as to costs or otherwise, and subject to such undertaking being given, if any as the court may think just, pending orders on the motion after notice to the parties affected thereby,

3. Where an *exparte* order is made by the Court, unless the Court has fixed a date for the return of the notice, or

otherwise directs, the Registrar shall fix a date for the return of the notice and the application by notice of motion shall be posted before the Court for final orders on the returnable date.

4. A notice of motion shall be instituted in the suit matter in which the application is intended to be made and shall state the time and place of application and the nature of or the order asked for and shall be addressed to the party or parties intended to be affected by it unless they have an advocate on record, in which case it will be addressed to the advocate on record, and shall be signed by the advocate on record of the party moving, or by the party himself where he acts in person.

5. (1) Unless otherwise ordered, the notice of motion together with the affidavit in support thereof shall be served on the opposite party not less than seven days before the day appointed for the motion where such opposite party has entered appearance, and not less than fourteen days before the day appointed for the motion where such party has not entered appearance.

The affidavits in opposition shall be filed in this Registry not later than five days before the day appointed for the hearing and affidavits in reply shall be filed not later than two days before the day of hearing. The affidavits in opposition or reply shall be served on the opposite party or parties and shall not be accepted in the Registry unless they contain endorsement of service signed by such party or parties.

(2) Leave to serve short notice of motion may be obtained *ex-parte* from the Registrar upon affidavit.

6. Notice shall be given to the other party or parties of all grounds intended to be urged in support of, or in opposition to, any motion.

7. Any interlocutory or miscellaneous application, notwithstanding that it is made in an appeal or other proceeding in which a substantial question of law as to the interpretation of the Constitution is raised, may be heard and decided by a Bench of less than five Judges.

## ORDER IX

## PROCEEDINGS BY OR AGAINST MINORS OR PERSONS OF

## UNSOUND MIND

1. Every appeal, petition or other proceeding by a minor shall be instituted or continued in his name by his next friend

2. A next friend shall not retire without the leave of the Court. The Court may require him to procure a fit person to be put in his place before he is permitted to retire, and may also, if it thinks fit, require him to furnish security for costs already incurred as a condition of his retirement.

3. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a new next friend in his place.

(2) Where the advocate on record of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit as the next friend of such minor.

4. An application for the appointment of a new next friend of a minor shall be supported by an affidavit showing that the person proposed is a fit and proper person to be so appointed and has no interest adverse to that of the minor.

5. Where a respondent to an appeal or petition is a minor and is not represented by a guardian, an application shall be made to the Court by the appellant or petitioner as the case may be, or by some person interested in the minor for the appointment of a guardian of such minor; and it shall be supported by an affidavit stating that the proposed guardian has no interest in the matter in question in the appeal or petition adverse to that of the minor. Where a person other than the father or other natural guardian of the minor is proposed as guardian, notice of the application shall be served on the father or other natural guardian of the minor, or on the person with whom the minor resides, not less than fourteen days before the day named in the notice for the hearing of the application. Where there is no other person fit and willing to act as guardian, the Court may appoint an officer of the Court to be the guardian.

6. (1) No guardian of a minor shall retire from a suit, appeal or other proceeding without the leave of Court. Where a guardian of a minor fails to do his duty or other sufficient cause is shown for his removal, the Court may remove him from the guardianship of the minor and make such order as to costs as it thinks fit.

(1) Where the guardian of a minor retires, dies or is removed by the Court during the pendency of the suit, appeal or other proceeding, the Court shall appoint a new guardian in his place.

7. When a guardian *ad litem* of a minor respondent is appointed, and it is made to appear to the Court that the guardian is not in possession of any, or sufficient, funds for the conduct of the appeal or petition on behalf of the respondent, and that the respondent will be prejudiced in his defence thereby, the Court may, in its discretion, from time to time, order the appellant or petitioner, as the case may be, to advance to the guardian of the minor for the purpose of his defence such moneys as the Court may fix, and all moneys so advanced shall

form part of the costs of the appellant or petitioner in the appeal or petition, as the case may be. The order shall direct that the guardian do file in Court an account of the moneys so received by him.

8. An application to declare as a major a party to a proceeding described as a minor and to discharge his next friend or guardian shall be supported by an affidavit stating the age of the alleged major and the date on which he attained majority. Notice of the application shall be given to the next friend or guardian and to the alleged major.

9 No next friend or guardian of a minor in an appeal or other proceeding, shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the appeal or proceeding in which he acts as next friend or guardian.

10. An application made to the Court for leave to enter into an agreement or compromise or for the withdrawal of any appeal or other proceeding in pursuance of a compromise on behalf of a minor, shall be supported by an affidavit from the next friend or guardian of the minor stating that the agreement or compromise is for the benefit of the minor, and where the minor is represented by an Advocate, by a certificate or by a statement at the Bar from such advocate to the effect that the agreement or compromise is, in his opinion, for the benefit of the minor. A decree or order made in pursuance of the compromise of an appeal or other proceeding, to which a minor is a party, shall recite the sanction of the Court thereto and shall set out the terms of the compromise.

11. The provisions of this Order, so far as they are applicable, shall apply to persons adjudged to be of unsound mind and to persons who, though not so adjudged, are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued."

12. Save as aforesaid, the provisions of Order XXXII of the Code relating to suits so far as applicable, shall apply *mutatis mutandis* to appeals and other proceedings in the Court.

## ORDER X

### DOCUMENTS

1. The officers of the Court shall not receive any pleading, petition, affidavit or other document except original exhibits and certified copies of public documents, unless it is fairly and legibly written, type-written or lithographed in double-line spacing, on one side of standard petition paper demy-foolscap size, <sup>10</sup>[or of the size of 29.7cm x 21 cm] or paper which is ordinarily used in the High Courts for the purpose. Copies filed for the use of the Court shall be neat and legible, and shall be certified to be true copies by the advocate on record, or by the party in person, as the case may be.

2. No document in a language other than English shall be used for the purpose of any proceedings before the Court, unless it is accompanied by-

(a) a translation agreed to by both parties; or

---

<sup>10</sup> Inserted vide G.S.R 410-68

(b) a translation certified to be true translation by a translator appointed by the Court;  
or

(c) the said document is translated by a translator appointed or approved by the Court.

3. Every document required to be translated shall be translated by a translator appointed or approved by the Court:

Provided that a translation agreed to by both parties, or certified to be a true translation by the translator appointed or approved by the Court, may be accepted.

4. Every translator shall, before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation.

5. All complaints, petitions, applications and other documents shall be presented by the plaintiff, petitioner, applicant, appellant, defendant or respondent in person or by his duly authorised agent or by an advocate on record duly appointed by him for the purpose:

Provided that a party, who had been adjudged to be a pauper for the purpose of the proceedings in the courts below, may present the document before the Judicial authority of the place where the said party resides, and the said Judicial authority, after attesting the document and endorsing thereon under his seal and signature the date of presentation, shall transmit the same to the Court by registered post, acknowledgment due at the expense of the party concerned. The date of presentation in this Court of the said document shall be deemed to be the date endorsed thereon by the said Judicial authority.

6. (1) All complaints, petitions, appeals or other documents shall be presented at the filing counter and shall, wherever necessary, be accompanied by the documents required under the Rules of the Court to be filed along with the said complaint, petition or appeal.

(2) On receipt of the document, the officer in charge of the filing counter shall endorse on the document the date of receipt and enter the particulars of the said document in the register of daily filings and cause it to be sent to the department concerned for examination. If on a scrutiny, the document is found in order, it shall be duly registered and given a serial number of registration.

(3) Where a document is found to be defective, the said document shall, after notice to the party filling the same, be placed before the Registrar. The Registrar may, by an order in writing, decline to receive the document if, in his opinion, the mandatory requirements of the rules are not satisfied. Where, however, the defect noticed is formal, the Registrar may allow the party to rectify the same in his presence; but, in other cases, he may require the party to obtain an order from the Court permitting the party to rectify the same and for this purpose may allow to the party concerned, such time as may be necessary but not exceeding twenty-eight days in aggregate.

(4) Where the party fails to take any steps for the removal of the defect within the time fixed for the same by the Registrar, the Registrar may, for reasons to be recorded in writing, decline to registrar the document..

(5) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.

7. The Registrar may on an application by the party interested, order the return of a document filled in a suit, appeal or matter, if the person applying therefor delivers in the office a certified copy thereof to be substituted for the original.

8. (1) Except as otherwise provided by these rules or by any law for the time being in force, the court fees set out in the Third Schedule to these Rules shall be payable on the documents mentioned therein, and no document chargeable with a fee under the said Schedule shall be received or filed in the Registry unless the fee prescribed has been paid on it. No copy of a document shall be furnished to any person unless the fee prescribed therefor has been paid.

(2) All fees referred to in sub-rule (1) shall be collected in court fee stamps sold in Delhi in accordance with the provisions of the Court-fees Act as in force in the Union territory of Delhi,

(3) No document chargeable with a court fee shall be acted upon in any proceedings in this Court until the stamp thereon has been cancelled.

The officer receiving the document shall forthwith effect such cancellation by punching out the figure head, so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

(4) Whenever a question of the proper amount of the court fees payable is raised, the Registrar or the Taxing Officer of the Court shall decide such question before the document or the proceeding is acted upon in the Registry and whenever it is found that due to a *bona fide* mistake the court fee paid is insufficient the Registrar shall call upon the party concerned to make good the deficiency within such time as the Registrar may think reasonable but not exceeding three months in any case.

(5) In case the deficiency in the court fee is made good within the time allowed, the date of the institution of the proceeding shall be deemed to be the date on which the proceeding was initially instituted.

(6) The Registrar may in a proper case on an application made by the party issue a certificate regarding any excess court fee paid under a mistake.

9. (1) The levy and collection of court fee under these rules shall be under the general superintendence of the Registrar of the Court who may be assisted in his supervision by the Assistant Registrars of the Court.

(2) Where at any time during the course of the pendency of a suit, appeal or proceedings, or even after the conclusion of such a proceeding it appears to the Registrar or the Taxing Officer that through mistake or inadvertence, a document which ought to be stamped in a certain manner has been received and acted upon without its being stamped or that the court fee paid thereon initially was insufficient, the Registrar or the Taxing Officer shall record a declaration to that effect and determine the amount of deficiency in court fee:

Provided that no such declaration shall be made until the party liable to pay the court fee has had an opportunity of being heard.

(3) When a declaration has been recorded under sub-rule (2) and if that relates to a matter pending before the court, the procedure prescribed by sub-rule (3) shall be followed; if it relates to the proceedings which have already been disposed of the Registrar shall, if the

deficiency is not made good within three months of the declaration made, forward a requisition for the recovery of the same to the Central Government which shall recover the amount of such court fee from the person liable to pay the same as if it were an arrear of land revenue.

## ORDER XI

### 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, and such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.

3. Every affidavit shall be instituted in the cause, appeal or matter in which it is sworn.

4. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation, if any, and the true place of abode of the deponent.

5. Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated.

6. An affidavit requiring interpretation to the deponent shall be interpreted by an interpreter nominated or approved by the Court, if made within the State of Delhi, and if made elsewhere, shall be interpreted by a competent person who shall certify that he has correctly interpreted the affidavit to the deponent.

7. Affidavits for the purposes of any cause, appeal or matter before the Court may be sworn before a Notary or any authority mentioned in section 139 of the Code or before the Registrar of this Court, or before a Commissioner generally or specially authorised in that behalf by the Chief Justice.

8. Where the deponent is a *pardahnashin lady* she shall be identified by a person to whom she is known and that person shall prove the identification by a separate affidavit.

9. Every exhibit annexed to an affidavit shall be marked with the title and number of the cause, appeal or matter and shall be initialled and dated by the authority before whom it is sworn.

10. No affidavit having any interlineation, alteration or erasure shall be filed in Court unless the interlineation or alteration is initialled, or unless in the case of an erasure the



words or figures written on the erasure are rewritten in the margin and initialled, by the authority before whom the affidavit is sworn.

11. The Registrar may refuse to receive an affidavit where in his opinion the interlineations, alterations or erasures are so numerous as to make it expedient that the affidavit should be rewritten.

12. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used except by leave of the Court.

13. In this Order, 'affidavit' includes a petition or other document required to be sworn or verified; and 'sworn' includes affirmed. In the verification of petitions, pleadings or other proceedings, statements based on personal knowledge shall be distinguished from statements based on information and belief. In the case of statements based on information, the deponent shall disclose the source of his information.

## ORDER XII

### INSPECTION, SEARCH, ETC.

1. Subject to the provisions of these rules, a party to any cause, appeal or matter who has appeared shall be allowed to search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

2. The Court, on the application of a person who is not a party to the case, appeal or matter, may on good cause shown, allow such person such search or inspection or to obtain such copies as is or are mentioned in the last preceding rule, on payment of the prescribed fees and charges. 3. A search or inspection under rule 1 or rule 2 during the pendency of a cause, appeal or matter, shall be allowed only in the presence of an officer of the Court and after twenty-four hours' notice in writing to the parties who have appeared, and copies of documents shall not be allowed to be taken, but notes of the search or inspection may be made.

4. Copies required under rule 1 or rule 2 may be certified as correct copies by the Registrar, Deputy Registrar, Assistant Registrar, or such other officer as may be authorised in that behalf by the Registrar.

5. An application may be made to the Registrar for the issue urgently of a copy of any judgment, decree or order of the Court or of any proceedings filed in the Court and upon the order being so made, the said copy shall be made ready and issued within seven days of the making of the application or such further time as the Registrar may specify.

6. No record or document filed in any cause, appeal or matter shall, without the leave of the Court, be taken out of the custody of the Court.

7. The Registrar may, in his discretion, permit any record to be sent to any court, tribunal or other public authority on requisition received from such court, tribunal or authority.

## ORDER XIII

### JUDGMENTS, DECREES AND ORDERS

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their advocates on record, and the decree or order shall be drawn up in accordance therewith.
2. A member of the Court may read a judgment prepared by another member of the Court.
3. Subject to the provisions contained in Order XL of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.
4. Certified copies of the judgment, decree or order shall be furnished to the parties on requisition made for the purpose, and at their expense.
5. Every decree passed or order made by the Court shall be drawn up in the Registry and be signed by the Registrar or Deputy Registrar and sealed with the seal of the Court and shall bear the same date as the judgment in the suit or appeal.
6. The decree passed or order made by the Court in every appeal, and any order for costs in connection with the proceedings therein, shall be transmitted by the Registrar to the court or tribunal from which the appeal was brought, and steps for the enforcement of such decree or order shall be taken in that Court or tribunal in the way prescribed by law.
7. Orders made by the Court in other proceedings shall be transmitted by the Registrar to the judicial or other authority concerned to whom such orders are directed, and any party may apply to the Judge in Chambers that any such order, including an order for payment of costs, be transmitted to any other appropriate court or other authority for enforcement.
8. In cases of doubt or difficulty with regard to a decree or order made by the Court, the Registrar or the Deputy Registrar shall, before issuing the draft, submit the same to the Court.
9. Where the Registrar or the Deputy Registrar considers it necessary that the draft of any decree or order should be settled in the presence of the parties or where the parties require it to be settled in their presence, the Registrar or the Deputy Registrar shall, by notice in writing, appoint a time for settling the same and the parties shall attend the appointment and produce the briefs and such other documents as may be necessary to enable the draft to be settled.
10. Where any party is dissatisfied with the decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court.

#### ORDER XIV

#### PAYMENT INTO AND OUT OF COURT OF SUITORS' FUNDS

1. Unless otherwise ordered, all monies directed to be paid into this Court to the credit of any suit, appeal or other proceeding, shall be paid into the Reserve Bank of India at New Delhi (hereinafter referred to as the Bank), into an account entitled Government A/c-P-Deposits and Advances-II Deposits Not Bearing Int.-(C) Other Deposits A/cs.-Deptl. and Judicial Deposits-Civil Deposits-Civil Court Deposits'.

2. Notwithstanding anything contained in rule 3, rule 4 or rule 5 of the Registrar may, in appropriate cases, authorise the acceptance of moneys by demand drafts issued in favour of the Registrar and payable in Delhi or New Delhi by a Scheduled Bank, and direct that the said amount be deposited with the Reserve Bank as provided by rule 1. On encashment, the date of tender in such cases shall be deemed to be the date on which the demand draft is presented for encashment:

Provided that such tender by demand draft is made a day prior to the due date.

3. Any person ordered to pay money into Court shall present a lodgment schedule in the prescribed form to the Section Officer of the Accounts Section of the Registry for the issue of a chalan to enable him to make the payment into the Bank. The lodgment schedule shall be accompanied by a copy of the order directing the payment or shall bear a certificate from the Registrar endorsed thereon as to the amount to be paid and the time within which the payment is to be made.

4. On presentation of the lodgment schedule, a chalan, in duplicate in the prescribed form specifying the amount to be paid and the date within which it should be paid, but in no case exceeding ten days from the date of issue of the chalan, shall be issued by the Section Officer, Accounts Section, to the party directed to make the payment, who shall thereupon present the same at the Bank and make the payment. The Bank shall, on receiving payment, retain one copy of the chalan and return the other copy, duly signed and dated acknowledging the receipt of the money, to the person making the payment. The Bank shall not accept the payment if the amount is tendered beyond the date mentioned in the chalan as the last date for payment.

5. On production of the copy of the chalan duly signed and acknowledged by the Bank as aforesaid, the person making the payment shall be given credit in the books maintained by the Accounts Section of the Registry for the amount paid into the Bank, and a receipt signed by the Registrar shall be issued to him and the said chalan shall be retained in the Section.

6. The Section Officer of the Accounts Section shall keep a register cause-wise of all money, effects and securities of the suitors of the Court, which shall be ordered to be paid or delivered into or out of the Court. The purpose for which the deposit is made and the orders of attachment received, if any, of the funds, shall be duly entered in the register. No money shall be paid out of the funds in Court without an order of the Court.

7. Where a party seeks payment out of any monies in Court, he shall present an application to the Court for an order for payment. The application shall be accompanied by a Certificate of funds signed by the Registrar showing the amount, if any, standing to the credit of the suit, appeal or other proceeding from which payment out is sought and the claims and attachments, if any, subsisting thereon on the date of the certificate.

8. Upon an order being made for payment out, the party in whose favour the order is made shall apply to the Registrar for payment to him in accordance with the said order. The

Registrar shall thereupon issue an order for payment in the prescribed form for the amount to be paid in favour of the party entitled to payment. The payment order shall be endorsed at the same time on the original chalan received from the Bank. The payment order together with the chalan duly endorsed for payment shall be handed over to the party entitled to payment who shall present the same at the New Delhi Treasury and obtain payment. Where, however the entire amount of the chalan or the entire balance remaining unpaid thereunder is not to be paid out to the party, the original chalan shall not be handed over to him, but only a copy thereof endorsed for payment shall be given to him for presentation at the Treasury, the original chalan being retained in the Accounts Section until the funds are fully paid out.

9. The Section Officer, Accounts Section, shall check and tally the accounts maintained in the Section every month with the monthly statements of receipts and payments to be received from the New Delhi Treasury and the Registrar shall certify under his signature every month that the accounts have been duly checked and tallied.

10. Nothing in this Order shall apply to the payment of fees relating to enrolment of advocates which may be paid into any Treasury or Sub-Treasury or the State Bank of India or the Reserve Bank; to the credit of an account entitled 'XXI Administration of Justice-Receipts of the Supreme Court'.

## PART II-Appellate Jurisdiction

### (A) Civil Appeals

#### ORDER XV

#### APPEALS ON CERTIFICATE BY HIGH COURT

1. Where a certificate has been given under clause (1) of article 132 or clause (1) of article 133 or article 135 of the Constitution or under any other provision of law, the party concerned shall file a petition of appeal in the Court.

2. Subject to the provisions of sections 4, 5 and 12 of the Limitation Act, 1963 (36 of 1963) the petition of appeal shall be presented within sixty days from the date of the grant of the certificate of fitness.

3. (1) The petition shall recite succinctly and in chronological order with relevant dates, the principal steps in the proceedings leading up to the appeal from the commencement thereof till the grant of the certificate of leave to appeal to the Court, and shall also state the amount or value of the subject matter of the suit in the court of first instance and in the High Court, and the amount or value of the subject matter in dispute before the Court with particulars showing how the said valuation has been arrived at. Where the appeal is incapable of valuation, it shall be stated.

(2) The petition shall be accompanied by a certified copy of the decree or order appealed from. In cases where according to the practice prevailing in the High Court the decree or order is not required to be drawn up it shall be so stated on affidavit and the petition of appeal in that event shall be accompanied by a certified copy of the judgement appealed from. It shall not be necessary to file along with the petition of appeal a certified copy of the certificate of fitness granted by the High Court, but the petition shall be supported by an affidavit stating the date on which the application for certificate was made to the High Court, the date of the order granting the said certificate and the provision of law under which the said certificate has been granted.

(3) Where at any time between the grant by the High Court of the Certificate for leave to appeal to the Court and the filing of the petition of appeal, any party to the proceeding in the Court below dies, the petition of appeal may be filed by or against the legal representative, as the case may be, of the deceased party, provided that the petition is accompanied by a separate application, duly supported by an affidavit, praying for bringing on record such person as the legal representative of the deceased party and setting out the facts showing him to be the proper person to be entered on the record as such legal representative.

(4) The Registrar, after satisfying himself that the petition of appeal is in order, shall endorse the date of presentation on the petition and register the same as an appeal in the Court.

5. Where a party desires to appeal on grounds which can be raised only with the leave of the Court, it shall lodge along with the petition of appeal a separate petition stating the grounds so proposed to be raised and praying for leave to appeal on those grounds.

6. Within thirty days of the filing of the petition of appeal, the appellant shall deposit in the Court security for the costs of the respondent.

7. The security for the costs of the respondent shall be in the sum of two thousand rupees. The Court may, in appropriate cases, enhance or reduce the amount of security to be deposited.

8. Where an appellant whose appeal has been registered in the Court fails to furnish the security within the time prescribed, or within such further time as the Court may allow, the Registrar shall call upon the appellant to show cause before the Court why the appeal should not be dismissed for non-prosecution.

9. The Court may after hearing the parties who have entered appearance dismiss the appeal for non-prosecution or give such other directions thereon as the justice of the case may require.

#### *Appearance by Respondent*

10. As soon as the security for the costs of the respondent has been deposited, the Registrar of the Court shall require the appellant-

(i) to furnish as many copies of the petition of appeal as may be considered necessary for record and for service on the respondent; and

(ii) to send to the Registrar of the Court appealed from a copy of the petition of appeal for record in that court and a copy for service upon the respondent or each respondent:

Provided that the Registrar of the Court may on an application made for the purpose, dispense with service of the petition of appeal on any respondent who did not appear in the proceedings in the Court appealed from or on his legal representative:

Provided however that no order dispensing with service of notice shall be made in respect of a respondent who is a minor or a lunatic:

Provided further that an order dispensing with service of notice shall not preclude any respondent or his legal representative from appearing to contest the appeal.

11. On receipt from the Court of the copy of the petition of appeal, the Registrar of the Court appealed from shall-

(i) cause notice of the lodgment of the petition of appeal to be served on the respondent personally or in such manner as the court appealed from may by rules prescribe;

(ii) unless otherwise ordered by the Court, transmit to the Court at the expense of the appellant the original record of the case; and

(iii) as soon as notice as aforesaid is served, to send a certificate as to the date or dates on which the said notice was served.

12. A respondent shall enter appearance in the Court within thirty days of the service on him of the notice of lodgment of the petition of appeal.

13. The respondent may within the time limited for his appearance deliver to the Registrar of the Court and to the appellant a notice in writing consenting to the appeal, and the Court may thereupon make such order on the appeal as the justice of the case may require without requiring the attendance of the person so consenting.

#### *Preparation of Record*

14. (1) The record shall be printed in accordance with the rules contained in the First Schedule to these rules and, unless otherwise ordered by the Court, it shall be printed under the supervision of the Registrar of the Court:

Provided that where the proceedings from which the appeal arises were had in courts below in a language other than English, the Registrar of the Court appealed from shall within three months from the date of the service on the respondent of the notice of petition of appeal transmit to the Court in triplicate a transcript in English of the record proper of the appeal to be laid before the Court, one copy of which shall be duly authenticated. The provisions contained in rules 15 to 20 shall apply to the preparation and transmission to the Court of the said transcript record.

(2) Upon receipt from the Court appealed from of the English transcript of the record as aforesaid the Registrar of the Court shall require the appellant to deposit the charges for making further copies of the said transcript within such time as he may prescribe, but not exceeding twenty-eight days, and with all convenient speed, arrange for the preparation thereof .

(3) Unless otherwise ordered by the Court, at least twenty copies of the record shall be prepared.

15. (1) As soon as the original record of the case is received in the Court, the Registrar shall give notice to the parties of the arrival of the original record.

(2) The appellant shall within four weeks of the service upon him of the notice referred to in sub-rule (1), file a list of the documents which he proposes to include in the paper book, a copy whereof shall be served on the respondent. The respondent may

within three weeks of the service on him of the said list file a list of such additional documents as he considers necessary for the determination of the appeal.

16. After the expiry of the time fixed for the filing of the additional list by the respondent, the Registrar shall fix a day for the settlement of list of documents to be included in the appeal record and shall give notice thereof to the parties who have entered appearance. In settling the lists the Registrar, as well as the parties concerned, shall endeavour to exclude from the record all documents that are not relevant to the subject matter of the appeal and generally to reduce the bulk of the record as far as practicable.

17. Where the respondent object to the inclusion of a document on the ground that it is not necessary or is irrelevant and the appellant nevertheless insists upon its inclusion, the record as finally printed shall, with a view to subsequent adjustment of cost of and incidental to the printing of the said document, indicate in the index of papers or otherwise the fact that the respondent has objected to the inclusion of the document and that it has been included at the instance of the appellant.

18. Where the appellant objects to the inclusion of a document on the ground that it is not necessary or is irrelevant and the respondent nevertheless insists upon its inclusion, the Registrar, if he is of opinion that the document is not relevant, may direct that the said document be printed separately at the expense of the respondent and require the respondent to deposit within such time as he may prescribe, the necessary charges therefor; and the question of the costs thereof shall be dealt with by the Court at the time of the determination of the appeal.

19. As soon as the index of the record is settled, the Registrar concerned shall cause an estimate of the costs of the preparation of the record to be prepared and served on the appellant and to require him to deposit within thirty days of such service the said amount. The appellant may deposit the said amount in lump-sum or in such instalments as the Registrar may prescribe.

20. Where the record has been printed for the purpose of the appeal before the High Court and sufficient number of copies of the said printed record are available, no fresh printing of the record shall be necessary except of such additional papers as may be required.

21. Where an appeal paper book is likely to consist of two hundred or less number of pages, the Registrar may, instead of having it printed, have the record cyclostyled under his supervision.

22. If at any time during the preparation of the record the amount deposited is found insufficient, the Registrar shall call upon the appellant to deposit such further sum as may be necessary within such further time as may be deemed fit but not exceeding twenty-eight days in the aggregate.

23. Where the appellant fails to make the required deposit, the preparation of the record shall be suspended and the Registrar concerned shall not proceed with the preparation thereof without an order in this behalf of the Court and where the record is under preparation in the Court appealed from, of the Court appealed from.

24. When the record has been made ready the Registrar shall certify the same and give notice to the parties of the certification of the record and append to the record a certificate

showing the amount of expenses incurred by the party concerned for the preparation of the record.

25. Each party who has entered appearance shall be entitled to three copies of the record for his own use.

26. Subject to any special direction from the Court to the contrary, the costs of, and incidental to, the printing of the record shall form part of the costs of the appeal, but the costs of, and incidental to, the printing of any document objected by one party in accordance with rule 18 or rule 19, shall, if such document is found, on taxation of costs, to be unnecessary or irrelevant, be disallowed to, or borne by the party insisting on including the same in the record

27. Where the record is directed to be prepared under the supervision of the Registrar of the Court appealed from, the provisions contained in rules 15 to 25 shall apply *mutatis mutandis* to the preparation thereof.

#### *Special Case*

28. Where the decision of the appeal is likely to turn exclusively on a question of law, any party, with the sanction of the Registrar of the Court, may submit such question of law in the form of a special case, and the Registrar may call the parties before him, and having heard them and examined the record, may report to the Court as the nature of the proceedings and the record that may be necessary for the discussion of the same. Upon perusing the said report, the Court may give such directions as to the preparation of the record and hearing of the appeal, including directions regarding the time within which or otherwise, the parties shall lodge their respective statements of case:

Provided that nothing herein contained shall in any way prevent this Court from ordering the full discussion of the whole case if the Court shall so think fit.

#### *Withdrawal of Appeal*

29. Where at any stage prior to the hearing of the appeal an appellant desires to withdraw his appeal, he shall present a petition to that effect to the Court. At the hearing of any such petition a respondent who has entered appearance may apply to the Court for his costs.

#### *Non-Prosecution of Appeals-Change of Parties*

30. If an appellant fails to take any steps in the appeal within the time fixed for the same under these rules, or if no time is specified, it appears to the Registrar of the Court that he is not prosecuting the appeal with due diligence, the Registrar shall call upon him to explain his default and, if no explanation is offered, or if the explanation offered appears to the Registrar to be insufficient, the Registrar may issue a summons calling upon him to show cause before the Court why the appeal should not be dismissed for non-prosecution.

31. The Registrar shall send a copy of the summons mentioned in the last specified rule to every respondent who has entered appearance. The Court may, after hearing the



parties, dismiss the appeal for non-prosecution or give such other directions thereon as the justice of the case may require.

32. Where at any time between the filing of the petition of appeal and the hearing of the appeal the record becomes defective by reason of the death or change of status of a party to the appeal, or for any other reason, an application shall be made to the Court, stating who is the proper person to be substituted or entered on the record in place of, or in addition to the party on record.

33. Upon the filing of such an application the Registrar of the Court shall, after notice to the parties concerned, determine who in his opinion is the proper person to be substituted or entered on the record in place of, or in addition to the party on record, and the name of such person shall thereupon be substituted or entered on the record:

Provided that no such order of substitution or revivor shall be made by the Registrar-

- (i) Where a question arises as to whether any person is or is not the legal representative of the deceased party, or
- (ii) Where a question of setting aside the statement of the cause is involved; in such a case he shall place the matter before the Court for orders:

Provided further that where during the course of the proceedings it appears to the Registrar that it would be convenient for the enquiry that investigation in regard to the person who is to be substituted on record, be made by the court appealed from or a court subordinate thereto, the Registrar may place the matter before the Judge in Chambers and the Judge in Chambers may thereupon make an order directing the court appealed from to investigate into the matter either itself or cause an enquiry to be made by a Court subordinate to it, after notice to the parties, and submit its report thereon to this Court within such time as may be fixed by the Order. On receipt of the report from the Court below the matter shall be posted before the Judge in Chambers again for appropriate orders.

34. Save as aforesaid the provisions of Order XXII of the Code relating to abatement shall apply mutatis mutandis to appeals and proceedings before the Court.

35. (1) Within sixty days of the service on him of the notice of authentication of the record, the appellant shall lodge in the Court the statement of his case and serve a copy thereof on the respondent. The respondent shall lodge his case within thirty days thereafter.

(2) No party to an appeal shall be entitled to be heard by the Court unless he has previously lodged his case in the appeal:

Provided that where a respondent, who has entered appearance, does not desire to lodge a case in the appeal. He may give the Registrar of the Court notice in writing of his

intention not to lodge any case while reserving his right to address the Court on the question of costs only.

36.(1) The statement of a case shall consist of two parts as follows:-

Part I shall consist of a concise statement of the facts of the case in proper sequence. A list of the dates of the relevant events leading up and concerning the litigation in chronological order and pedigree tables, wherever necessary, shall be given at the end of the part.

Part II shall set out the contention of facts and law sought to be urged in support of the claim of the party lodging the case and the authorities in support thereof. Where authorities are cited, reference shall be given to the official Reports, if available. Where text books are cited, the reference shall if possible, to the latest available editions, where a statute, regulation, rule, ordinance or bye-law is cited or relied on so much thereof as may be necessary to the decision of the case shall be set out. At the end of the part shall ordinarily be set out a table of cases cited.

(2) The case shall consist of paragraphs numbered consecutively. References shall be given by page and line to the relevant portions of the record in the margin and care shall be taken to avoid, as far as possible, the re-producing in the case of long extracts from the record. The case shall not travel beyond the limits of the certificate or the special leave, as the case may be, and of such additional grounds, if any, as the Court may allow to be urged on application made for the purpose. The Taxing Officer in taxing the costs of the appeal shall, either of his own motion, or at the instance of the opposite party, enquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

37. Two or more respondents may, at their own risk as to costs, lodge separate cases in the same appeal.

38. A respondent who has not entered appearance shall not be entitled to receive any notice relating to the appeal from the Registrar of the Court, nor allowed to lodge a statement of case in the appeal.

39. The appeal shall be set down for hearing one month after the expiry of the time prescribed for lodging the statement of cases by the respondent, Where a respondent fails to lodge the statement of case within the time prescribed, the appeal shall, subject to the provision in the proviso to rule 1, be set down *ex parte* against the respondent in default.

40. As soon as an appeal is set down for hearing, the appellant shall attend at the Registry and obtain eight copies of the record and cases to be bound in cloth or in one-fourth leather with paper sides, and six leaves of blank paper shall be inserted before the appellant's case. The front cover shall bear a printed label stating the title and Supreme Court Number of the Appeal, the contents of the Volume and the name and address of the advocates on record. The several documents, indicated by inducts, shall be arranged in the following order:-

- (1) Appellant's Case:
- (2) Respondent's Case:
- (3) Record (if in more than one Part showing the separate Parts by inducts, all Parts being paged at the top of the page);
- (4) Supplemental Record (if any) and the short title and Supreme Court Number of Appeal shall also be shown on the back.

41. The appellant shall lodge the bound copies not less than ten clear days before the date fixed for the hearing of the Appeal.

## ORDER XVI

### APPEALS BY SPECIAL LEAVE

1. Where leave to appeal to the Court was refused in a case by the High Court, a petition for special leave to appeal to the Court shall, subject to the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963) be lodged in the Court within sixty days from the date of the order of refusal and in any other case within ninety days from the date of the judgment or order sought to be appealed from:

Provided that where an application for leave to appeal to the High Court from the judgment of a single judge of that Court has been made and refused, in computing the period of limitation in that case under this rule, the period from the making of that application and the rejection thereof shall also be excluded.

#### *Explanation:*

For purposes of this rule the expression 'order of refusal' means the order refusing to grant the certificate referred under article 132 or article 133 of the Constitution on merits and shall not include an order rejecting the application on the ground of limitation or on the ground that such an application is not maintainable.

2. Where the period of limitation is claimed from the date of the refusal of a certificate under article 132 or article 133 of the Constitution, it shall not be necessary to file the order refusing the certificate, but the petition for special leave shall be accompanied by an affidavit stating the date of the judgment sought to be appealed from, the date on which the application for a certificate of fitness to appeal to the Court was made to the High Court, the date of the order refusing the certificate, and the ground or grounds on which the certificate was refused and in particular whether the application for the certificate was dismissed as being out of time.

3. Where an appeal lies to the Court on a certificate issued by the High Court, no application to the Court for special leave to appeal shall be entertained unless the High Court concerned has first been moved and it has refused to grant the certificate.

4. The petition shall state succinctly and clearly all such facts as may be necessary to enable the Court to determine whether special leave to appeal ought to be granted and shall be signed by the advocate on record for the petitioner unless the petitioner appears in person. The petition shall also state whether the petitioner has moved the High Court concerned for leave to appeal against its decision, and if so, with what result.

5. The petition shall be accompanied by-

- (i) a certified copy of the judgment and order appealed from; and
- (ii) an affidavit in support of the statement of facts contained in the petition.

6. No annexures to the petition shall be accepted unless such annexures are certified copies of documents which have formed part of the record of the case in the court sought to be appealed from; provided that uncertified copies of documents may be accepted as annexures if such copies are affirmed to be true copies upon affidavit.

7. The petitioner shall file at least seven spare sets of the petition and of the accompanying papers.

8. Where any person is sought to be impleaded in the petition as the legal representative of any party to the proceedings in the court below, the petition shall contain a prayer for bringing on record such person as the legal representative and shall be supported by an affidavit setting out the facts showing him to be the proper person to be entered on the record as such legal representative.

9. Where at any time between the filing of the petition for special leave to appeal and the hearing thereof the record becomes defective by reason of the death or change of status of a party to the appeal or for any other reason, an application shall be made to the Court stating who is the proper person to be substituted or entered on the record in place of or in addition to the party on record. Provisions contained in rule 33 of Order XV shall apply to the hearing of such applications.

10.(1) Unless a caveat as prescribed by rule 2 of Order XVIII has been lodged by the other parties who appeared in the court below, petitions for grant of special leave shall be put up for hearing *ex parte*, but the Court, if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition:

Provided that where a petition for special leave has been filed beyond the period of limitation prescribed therefor and is accompanied by an application for condonation of delay, the Court shall not condone the delay without notice to the respondent.

(2) A caveator shall not be entitled to costs of the petition, unless the Court otherwise orders.

Where a caveat has been lodged as aforesaid, notice of the hearing of the petition shall be given to the caveator; but a caveator shall not be entitled to costs of the petition, unless the Court otherwise orders.

11. On the grant of special leave, the petition for special leave shall, subject to the payment of additional court fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. The provisions contained in Order XV shall with necessary modifications and adaptations, be applicable to appeals by special leave and further steps in the appeal shall be taken in accordance with the provisions therefor.

## ORDER XVII

### PAUPER APPEALS AND APPLICATIONS

1. An application for leave to proceed as a pauper shall made on a petition. It shall be accompanied by:

(a) a copy of the petition of appeal and the documents referred to in rule 3 of Order XV, or of the petition for special leave and the documents mentioned in rule 5 of Order XVI, as the case may be, and

(b) an affidavit from the petitioner disclosing all the property to which he is entitled and the value thereof other than his necessary wearing apparel and his interest in the subject-matter of the intended appeal and stating that he is unable to provide security or surety for the cost of the respondent and pay court-fees.

2. The Registrar shall, be satisfying himself that the petition is in order, direct that the petition shall be filed and set down for hearing before the Chamber Judge on a date to be fixed for the purpose.

3. The application shall be posted before the Judge in Chambers who may himself inquire into the pauperism of the petitioner after notice to the other parties in the case and to the Attorney-General, or make an order directing the High Court either by itself or by a court subordinate to the High Court, to investigate the pauperism after notice to the parties interested and submit a report thereon within such time as may be fixed by the order. On receipt of the report, the petition shall again be posted before the Judge in Chambers for further orders:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless this Court sees cause to direct such inquiry.

4. In granting or refusing leave to appeal as a pauper, the Court shall ordinarily follow the principles set out in sub-rule (2) of rule 1 of Order XLIV of the Code.

5. Where a petitioner obtains leave of the Court to appeal as a pauper he shall not be required to pay court-fees or to lodge security for the costs of the respondent.

6. The Judge in Chambers may assign an advocate on record to assist a pauper in the case, unless the pauper has made his own arrangement for his representation. Such assignment shall ordinarily be from a panel of advocates willing to assist paupers and

chosen by the Judge in Chambers. It shall however be open to the Judge in Chambers in his discretion to assign an advocate outside the panel in any particular case.

7. (a) No fees shall be payable by a pauper to his advocate, nor shall any such fees be allowed on taxation against the other party except by an order of Court. The advocate may however receive from the pauper money for out of pocket expenses, if any, properly incurred in the case.

(b) It shall be open to the Court, if it thinks fit, to award costs against the adverse party or out of the property decreed to a pauper, and to direct payment of such costs to the advocate for the pauper.

(c) Save as aforesaid, no person shall take or agree to take or seek to obtain from a pauper any fee, profit or reward for the conduct of his case, and any person who takes, agrees to take or seeks to obtain, any such fee, profit or reward, shall be guilty of contempt of Court.

(d) Soon after a pauper appeal has been heard and disposed of, the advocate for the pauper shall file in the Registry a statement of account showing what monies, if any, were received by him in the case on any account from the pauper or from any person on his behalf and the expenditure incurred. If no monies had been received, a statement shall be filed to that effect. The Taxing Officer may, where he thinks it necessary, place the statement filed before the Judge in Chambers for his perusal and orders.

8. Where the appellant succeeds in the appeal, the Registrar shall calculate the amount of court-fees which would have been paid by the appellant if he had not been permitted to appeal as a pauper and incorporate it in the decree or order of the Court; such amount shall be recoverable by the Government of India from any party ordered by the Court to pay the same, and shall be the first charge on the subject matter of the appeal.

9. Where the appellant fails in the appeal or is dispaupered, the Court may order the appellant to pay the court-fees which would have been paid by him if he had not been permitted to appeal as a pauper.

10. The Central Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 8 or rule 9.

11. All matters arising between the Central Government and any party to the appeal under the three preceding rules shall be deemed to be questions arising between the parties to the appeal.

12. In every pauper appeal the Registrar shall, after the disposal thereof, send to the Attorney-General for India a memorandum of the court-fees payable by the pauper.

13. No appeal or other proceeding begun, carried on or defended by a pauper shall be compromised or discontinued without the leave of the Court.

## ORDER XVIII

## PETITIONS GENERALLY

1. Every petition shall consist of paragraphs numbered consecutively and shall be fairly and legibly written, type-written, lithographed or printed on one side of standard petition paper, demy fool-scape size, or of the size of 29.7cm X 21cm, or on paper ordinarily used in High Courts for transcribing petitions, with quarter margin, and endorsed with the name of the court appealed from, the full title and Supreme Court number of the appeal or matter to which the petition relates and the name and address of the advocate on record of the petitioner or of the petitioner where the petitioner appears in person. The petitioner shall file along with his petition such number of copies thereof as may be required for the use of the Court.

2. Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal of which the record has been registered in the Registry of the Court, any person claiming a right to appear before the Court on the hearing of such petition may lodge a caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar notice of the lodging of the petition, if at the time of the lodging of the caveat such petition has not yet been lodged, and, if and when the petition has been lodged, to require the petitioner to serve him with copy of the petition and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith, after lodging his caveat, give notice thereof to the petitioner, if the petition has been lodged.

3. Where a petition is lodged in the matter of any pending appeal of which the record has been registered in the Registry of the Court, the petitioner shall serve any party who has entered an appearance in the appeal, with a copy of such petition and the party so served shall thereupon be entitled to require the petitioner to furnish him at his own expense, with copies of any papers lodged by the petitioner in support of his petition.

4. A petition other than memorandum of appeal containing allegations of fact which cannot be verified by reference to the record in the Court shall be supported by an affidavit.

5. The Registrar may refuse to receive a petition other than a petition under article 32 of the Constitution on the ground that it discloses no reasonable cause or is frivolous, or contains scandalous matter but the petitioner may appeal, by way of motion, from such refusal to the Court.

6. As soon as all necessary documents are lodged, the petition shall be set down for hearing.

7. Subject to the provisions of rule 8, the Registrar shall as soon as the Court has appointed a day for the hearing of a petition, notify the day appointed on the notice board of the Court.

8. Where the prayer of a petition is consented to in writing by the opposite party, or where a petition is of a formal and non-contentious character, the Court may, if it thinks fit, make an order thereon, without requiring the attendance of then parties, but the Registrar shall, with all convenient speed, after the Court has made its order, notify the parties that the order has been made and of the date and nature of such order

9. A petitioner who desires to withdraw his petition shall give notice in writing to that effect to the Registrar. Where the petition is opposed the opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Court for his costs, but where the petition is unopposed, or where, in the case of an opposed petition, the parties have come to an agreement as to the costs of the petition, the petition may, if the Court thinks fit be disposed of in the same way *mutatis mutandis* as a consent petition under the provisions of rule 8.

10. Where a petitioner unduly delays the bringing of a petition to a hearing, the Registrar shall call upon him to explain the delay, and if no explanation is offered, or if the explanation offered is, in the opinion of the Registrar, insufficient, the Registrar may, after notifying all parties, who have entered appearance, place the petition before the Court for such directions as the Court may think fit to give thereon.

11. At the hearing of a petition not more than one advocate shall be heard on one side.

## ORDER XIX

### HEARING OF APPEALS

1. Subject to the directions of the Court, at the hearing of an appeal not more than two advocates shall be heard on one side.

2. No party shall, without the leave of the Court, rely at the hearing on any grounds not specified in the statement of the case filed by him.

3. Where the Court, after hearing an appeal, decides to reserve its judgment thereon, the Registrar shall notify the parties through their advocates on record of the day appointed by the Court for the delivery of the judgment.

4. (a) An appellant whose appeal has been dismissed for default of appearance may, within thirty days of the order, present a petition praying that the appeal may be restored and the Court may, after giving notice of such application to the respondent who has entered appearance in the appeal, restore the appeal if good and sufficient cause is shown, putting the appellant on terms as to costs or otherwise as it thinks fit, or pass such other order as the circumstances of the case and the ends of justice may require.



(b) Where an appeal is heard ex-parte and judgement is pronounced against the respondent, he may apply to the Court to re-hear the appeal, and if he satisfies the Court that the appeal was set down ex-parte against him without notice to him or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing the Court may re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

## ORDER XX

### MISCELLANEOUS

1. The filing of an appeal shall not prevent execution of the decree or order appealed against but the Court, may, subject to such terms and conditions as it may think fit to impose, order a stay of execution of the decree or order, or order a stay of proceedings, in any case under appeal to the Court.

2. A party to an appeal who appears in person shall furnish the Registrar with an address for service and all documents left at that address, or sent by registered post to that address, shall be deemed to have been duly served.

## B-Criminal Appeals ORDER XXI

### SPECIAL LEAVE PETITIONS IN CRIMINAL PROCEEDINGS AND CRIMINAL APPEALS

#### *Special Leave Petitions*

1. (1) Where leave to appeal to the Court was refused in a case by the High Court, a petition for special leave to appeal shall, subject to the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963), be lodged in the Court within sixty days from the date of order of refusal and in any other case within ninety days from the date of judgment or order sought to be appealed from:

Provided further that where an application for leave to appeal to the High Court from the judgment of a single judge of that court has been made and refused, in computing the period of limitation in that case under this rule, the period from the making of that application and the rejection thereof shall also be excluded.

*Explanation-* For purposes of this rule the expression 'order of refusal' means an order refusing to grant the certificate referred to in article 132 or article 134, as the case may be, of the Constitution on merits and shall not include an order rejecting the application on the ground of limitation or on the ground that such an application is not maintainable.

(2) Where the period of limitation is claimed from the date of refusal of a certificate, it shall not be necessary to file the order refusing a certificate, but the petition for special leave shall be accompanied by an affidavit stating the date of the judgment sought to be appealed from the date on which the application for a certificate was made to the High Court, the date of the order refusing the certificate and the ground or grounds on which the certificate was refused and in particular whether the application for a certificate was dismissed as being out of time.

2. Where an appeal lies to the Court on a certificate issued by the High Court no application to the Court for special leave to appeal shall be entertained unless the High Court concerned has first been moved and it has refused to grant the certificate.

3. The petition shall state succinctly and clearly all such facts as may be necessary to enable the Court to determine whether special leave to appeal ought to be granted and shall be signed by the advocate on record for the petitioner unless the petitioner appears in person. The petition shall also state whether the petitioner has moved the High Court concerned for leave to appeal against its decision, and if so, with what result.

4. The petition shall be accompanied by:

(1) a certified copy of the judgment and order appealed from; and

(2) an affidavit in support of the statement of facts contained in the petition.

5. (1) No annexures to the petition shall be accepted unless such annexures are certified copies of documents which have formed part of the record in the court or tribunal sought to be appealed from, provided that uncertified copies of documents may be accepted as annexures if such copies are affirmed to be true copies upon affidavit.

(2) The High Court or the tribunal concerned shall, on application by a petitioner intending to apply for special leave, grant him free of cost a certified copy of the judgment or order sought to be appealed from.

6. Where the petitioner has been sentenced to a term of imprisonment, the petition shall state whether the petitioner has surrendered. Where the petitioner has not surrendered to the sentence, the petition shall not be posted for hearing unless the Court, on a written application for the purpose, orders to the contrary. Where the petition is accompanied by such an application the application and the petition shall be posted together before the Court.

7. Unless a caveat as prescribed by rule 2 of Order XVIII has been lodged by the other parties who appeared in the court below, petitions for grant of special leave shall be put up for hearing ex-parte, but the Court, if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition.

8. (1) If the petitioner is in jail and is not represented by an advocate on record he may present his petition for special leave to appeal together with the certified copy of the

judgment and any written argument which he may desire to advance to the officer-in-charge of the jail, who shall forthwith forward the same to the Registrar of this Court. Upon receipt of the said petition, the Registrar of the Court shall whenever necessary call, from the proper officer of the court or the tribunal appealed from, the relevant documents for determination of the petition for special leave to appeal.

(2) As soon as all necessary documents are available the Registrar shall, where the petitioner has been sentenced to death, assign a counsel from a panel of amicus curiae and thereafter place the petition and complete documents for hearing before the Court. The fee of the counsel so assigned shall be one hundred rupees or such reasonable fee as may be fixed by the Court hearing the petition.

9. On the granting of the special leave, the petition for special leave shall be treated as the petition of appeal and shall be registered and numbered as such.

10. Upon an order being made granting special leave to appeal, the Registrar shall transmit to the court appealed from, a certified copy of the order together with a certified copy of the petition for special leave, and the affidavit, if any, filed in support thereof.

11. On receipt of the said order, the court appealed from shall give notice of the order to the respondent and require the parties to take all necessary steps to have the record of the case transmitted to the Court in accordance with the directions contained in the order granting special leave. The Registrar of the court appealed from shall certify to the Registrar of the Court that the respondent has received notice of the order of the Court granting special leave to appeal.

### **Criminal Appeals**

12. Every criminal appeal under article 132(i) and 134 (i) (c) of the Constitution shall be lodged in the Court within sixty days from the date of the certificate granted by the High Court, and every appeal under article 134(1) (a) and (b) of the Constitution or under any other provision of law within sixty days from the date of the judgment, final order or sentence appealed from:

Provided that in computing the period, the time requisite for obtaining a copy of the judgment or order appealed from, and, where the appeal is on a certificate, of the certificate, shall be excluded:

Provided further that the Court may, for sufficient cause shown, extend the time.

13. (1) The memorandum of appeal shall be in the form of a petition. It shall state succinctly and briefly, and as far as possible, in chronological order, the principal steps in the proceedings from its commencement till its conclusion in the High Court.

(2) Where the appeal lies to the Court as of right, the petition shall be accompanied by a certified copy of the judgment appealed from.

(3) Where the appeal is preferred by a certificate granted by the High Court it shall not be necessary to file along with the petition of appeal a certified copy of the judgment appealed from or of the certification fitness granted by the High Court; but in such case the petition shall be supported by an affidavit stating the date on which the application for certificate was made to the High Court and the date of the order granting the said certificate and the provision of law under which the said certificate is granted.

14. Where the appellant is in jail, he may present his petition of appeal and the documents mentioned in rule 13 including any written argument which he may desire to advance to the officer-in-charge of the jail, who shall forthwith forward the same to the Registrar of the Court.

15. The petition of appeal shall be registered and numbered as soon as it is lodged. On the registration of the appeal, the Registrar shall send a copy of the petition of appeal and the accompanying papers, if any, to the High Court or the tribunal concerned, and shall cause notice of the appeal to be given, where the appeal is by a convicted person, to the Attorney General for India or to the Advocate-General or the Government Advocate of the State concerned, or to both as the case may require, and, in cases where the appeal is by the Government, to the accused, and shall also furnish the Attorney-General for India or the Advocate-General or the Government Advocate of the State concerned as the case may be, with a copy of the petition of appeal and the accompanying papers, if any.

16. The respondent may enter appearance in the Court within thirty days of the service of the notice of lodgment of the petition of appeal on him.

### **Preparation of the Record**

17. The record of the appeal shall be printed accordance with the rules contained in the First Schedule to these rules, and unless otherwise order by the Court, it shall be printed under the supervision of the Registrar of this Court and at the expense of the appellant, in appeals involving sentence of death and in other case on which the Court thinks fit so to direct the record shall be printed at the expense of the State concerned.

18. (1) Save as otherwise provided for in the rules, the provisions contained in Order XV relating to the printing and preparation of the record in Civil Appeals shall, with necessary modifications and adaptations, apply to printing and preparation of records in Criminal Appeals.

(2) In all cases where the record has been printed for the purposes of the appeal before the High Court or other proceeding, all available copies of the printed record except one shall be dispatched to this Court along with the entire original record including the records of the court below, One of such copies shall be duly authenticated by the Registrar of the Court appealed from.

(3) If a minimum number of 5 copies of the said printed record is available, no fresh printing of the record shall be necessary except of such additional papers as may be required.

Explanation I- For the purposes of this rule the original record shall not include judgment of the High Court and the Courts below, but only duly authenticated copies thereof.

Explanation II- Printing for the purpose of this rule includes cyclostyling and typing and printed record includes cyclostyled or typed record.

(4) Two copies of the High Court paper book if available for dispatch to this Court shall be treated as transcript record for the purpose of printing in this court, In that event only such of the additional documents as the parties choose to include for the hearing of the appeal in this Court shall be typed in duplicate and transmitted to this Court along with the High Court paper books, one copy of each of which shall be duly authenticated.

(5) For the purpose of transcript record proper of the appeal, to be laid before this Court, such of the documents in vernacular as have already been translated for the purpose of the High Court appeal and which are included in the High Court appeal paper books need not be translated again.

19. Where the appellant fails to take necessary steps to have the record prepared and transmitted to the Court with due diligence, the Registrar of the court appealed from shall report the default to the Registrar of this Court, and the Registrar of this Court may thereupon issue a summons to the appellant calling upon him to show cause before the Court on a date to be specified in the summons why the appeal should not be dismissed. The Court may thereupon dismiss the appeal for non-prosecution or pass such orders as the justice of the case may require.

20. Where an appeal has been dismissed for non-prosecution, the appellant may, within thirty days of the order, present a petition praying that the appeal may be restored and the Court may, after giving notice of the application to the respondent, if he has entered appearance, restore the appeal if good and sufficient cause is shown.

21. (1) In the event of the Court ordering the printing of the record under the supervision of the Registrar of the court appealed from, he shall dispatch to the Registrar of this Court unless otherwise directed by this Court, not less than 15 copies where the appeal raises a question as to the interpretation of the Constitution, and not less than 10 copies in other cases. In the event of the record being printed in this Court, the Registrar will fix the number of copies to be printed for the use of this Court.

(2) In all cases involving a sentence of death, the printed record shall be made ready and dispatched to this Court within a period of 60 days after the receipt of the intimation from the Registrar of this Court of the filing of the petition of appeal or of the order granting special leave to appeal.

22. As soon as the record is ready the Registrar concerned shall give notice thereof to the parties to the appeal, and where the record is prepared under the supervision of the Registrar of the Court appealed from the said Registrar shall, after service of the notice,

send to the Registrar of this Court a certificate as to the date or dates on which the notice has been served.

### *Hearing of the Appeal*

23. Each party who has entered appearance shall be entitled to two copies of the record for his own use.

24. Unless otherwise ordered by the Court the appeal shall be set down for hearing thirty days after the expiry of the time prescribed for entering appearance by the respondent.

25. Where the accused person is not represented by an Advocate on Record of his choice the Court may, in a proper case, direct the engagement of an Advocate at the cost of Government. The fee of the Advocate so engaged shall be two hundred and fifty rupees for the first day of the hearing, with a refresher, where the hearing has lasted for more than 4 hours, of one hundred and twenty-five rupees for each additional day of the hearing, or such reasonable fee as may be fixed by the Court hearing the appeal.

26. (1) Due notice shall be given to the accused, where he is not represented, of the date fixed for the hearing of the appeal. The accused person may, if he so wishes, present his Case by submitting his argument in writing and the same shall be considered at the hearing of the appeal.

(2) It shall not be necessary for an accused person in custody to be produced before the Court at the hearing unless the Court thinks fit in the interest of justice to direct him to be produced to enable him to argue his case or for other reasons.

27. Pending the disposal of any appeal under these rules, the Court may order that the execution of the sentence or order appealed against be stayed on such terms as the Court may think fit.

28. After the appeal has been disposed of, the Registrar shall, with the utmost expedition, send a copy of the Court's judgment or order to the High Court or tribunal concerned.

29. In criminal proceedings, no security for costs shall be required to be deposited, and no court-fee, process fee, or search fee shall be charged and an accused person shall not be required to pay copying charges except for copies other than the first.

### *PART III-Original Jurisdiction*

#### ORDER XXII

#### PARTIES TO SUITS

1. Two or more plaintiffs may join in one suit in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

2. Two or more defendants may be joined in one suit against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

3. (1) The Court may at any such stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any plaintiff or defendant improperly joined be struck out, and that the name of any plaintiff or defendant who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(2) No person shall be added as a plaintiff without his consent.

4. Where it appears to the Court that any causes of action joined in one suit cannot conveniently be tried or disposed of together the Court may order separate trials or make such other order as may be expedient.

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

## ORDER XXIII

### PLAINTS

1. Every suit shall be instituted by the presentation of a plaint.

2. A plaint shall be presented to the Registrar, and all plaints shall be registered and numbered by him according to the order in which they are presented.

3. Every plaint shall comply with the rules contained in Order XXVI of these rules so far as they are applicable.

4. A plaint shall contain the following particulars:-

- (a) the names of the plaintiff and of the defendant;
- (b) the facts constituting the cause of action and when it arose;
- (c) the facts showing that the Court has jurisdiction;
- (d) the declaration or relief which the plaintiff claims.

5. The plaintiff shall endorse on the plaint, or annex there to, a list of the documents (if any) which he has produced along with it and the Registrar shall sign the list if on examination he finds it to be correct.

6. The plaint shall be rejected:-

- (a) where it does not disclose a cause of action;
- (b) where the suit appears from the statement in the plaint to be barred by any law.

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

8. The rejection of the plaint shall not of itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

9. Where a plaintiff sues upon a document in his possession or power, he shall produce it to the Registrar when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

10. Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

11. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

12. A document which ought to be produced in Court by the plaintiff when the plaint is presented or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence at the hearing of the suit.

#### ORDER XXIV

##### ISSUE AND SERVICE OF SUMMONS

1. When a suit has been duly instituted a summons shall be issued to the defendant to appear and answer the claim.

2. Every summons shall be signed by the Registrar, and shall be sealed with the seal of the Court.

3. Every summons shall be accompanied by a copy of the plaint.

4. The summons shall be served by being sent by Registered post to the Attorney-General for India or the Advocate General for the State, as the case may be, or to an advocate on record of the defendant empowered to accept service.

5. There shall be endorsed on every summons a notice requiring the defendant to enter an appearance within twenty eight days after the summons has been served.

6. A defendant shall enter the appearance by filing in Registry a memorandum in writing containing the name and place of business of his advocate on record, if any, and in



default of appearance being entered within the time mentioned in the summons, or as hereinafter provided, the suit may be heard ex parte.

7. The defendant shall forthwith give notice of his having entered an appearance to the plaintiff,

8. The plaintiff shall within fourteen days after the defendant has entered an appearance take out a summons for directions returnable before the Judge in Chambers, and the Judge shall on the hearing of the summons give such directions with respect to pleadings, interrogatories, the admission of documents and facts, the discovery, inspection and production of documents and such other interlocutory matters as he may think expedient.

## ORDER XXV

### WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

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

2. Where a defendant denies an allegation of fact he shall not do so evasively but shall answer the point of substance.

3. Each allegation of fact in the plaint, if not denied specifically or by necessary implication, or not expressly stated to be not admitted in the pleading of the defendant, shall be taken to be admitted, but the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

4. Where the defendant claims to set-off against a demand by the plaintiff any ascertained sum of money, he may in his written statement, but not afterwards without the leave of the Court, states the grounds of his claim and the particulars of the debt sought to be set-off.

5. The written statement containing the particulars mentioned in rule 4 of this Order shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off.

6. The rules relating to a written statement by a defendant shall apply to a written statement by a plaintiff in answer to a claim of set-off.

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

8. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such orders in relation to the suit as it thinks fit.

9. The defendant, in addition to his right of pleading a set-off, may set up by way of counter-claim against the claim of the plaintiff any right or claim in respect of a cause of action accruing to him either before or after the filing of the suit but before he has delivered his defence and before the time limited for delivering his defence has expired, whether that counter-claim sounds in damages or not, and the counter-claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

10. The Court may if in its opinion the counter-claim cannot be disposed of in the pending suit or ought not be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit.

## **ORDER XXVI**

### **PLEADINGS GENERALLY**

1. In this Order pleading means plaint or written statement.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies, but not the evidence by which those facts are to be proved, nor any argumentative matter, and shall be divided into paragraphs numbered consecutively.

3. Dates, sums and numbers shall be expressed in figures.

4. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered, upon such terms as to costs and otherwise, as may be just.

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

6. Every pleading shall be signed by, or by an advocate on record on behalf of the Attorney-General of India, or by an Advocate on record on behalf of the Advocate-General for the State, as the case may be.

7. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice or embarrass or delay the trial of the suit, or which contravenes any of the provisions of this Order.

8. The Court may at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

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

10. Amendments of pleadings made only for the purpose of rectifying a clerical error may be made on an order of the Registrar without notice, but unless otherwise ordered a copy of the order shall be served on all other parties.

## ORDER XXVII

### DISCOVERY AND INSPECTION

1. Order XI of the First Schedule to the Code except rules 5 and 23 of that order, shall apply with respect to discovery and inspection in suits instituted before the Court.

2. Where the Court has made an order allowing one party to deliver interrogatories to the other, those interrogatories shall be answered by such persons as the Court may direct.

3. No application for leave to deliver interrogatories shall be made by the defendant until after he has filed his written statement.

4. After an order has been made for the delivery of interrogatories one set of the interrogatories as allowed, shall be annexed and served with the order upon the person to be interrogated.

5. The Court may, for sufficient reason, allow any affidavit to be sworn, on behalf of the party from whom discovery, production or inspection is sought, by any person competent to make the same.

6. Where any document is ordered to be deposited in Court a copy of the order and a schedule of the document shall be left in the Registry at the time when the deposit is made.

7. When the purpose for which any documents have been deposited in Court is satisfied, the party by whom they were deposited may, pending the suit, have them delivered out to him, if he has the consent in writing of the other party, or an order of the Court.

## ORDER XXVIII

## ADMISSIONS

Order XII in the First Schedule to the Code with respect to admissions shall apply in suits instituted before the Court.

## ORDER XXIX

## SUMMONING AND ATTENDANCE OF WITNESSES

1. The provisions of sections 28 and 32 of the Code shall apply to summons to give evidence or to produce documents under these rules.

2. Order XVI in the First Schedule to the Code with respect to the summoning and attendance of witnesses shall apply, with the exception of the proviso to sub-rule (3) of rule 10, and the words '(a) within the local limits of the Court's ordinary original jurisdiction, or (b) without such limits but' in rule 19.

## ORDER XXX

## ADJOURNMENTS

In suits instituted before the Court Order XVII in the First Schedule to the Code with respect to adjournments shall, apply, with the substitution in rule 2 of the words in such manner as it thinks just 'for the words' in one of the modes directed in that behalf of Order IX, or make such other order as it thinks fit.

## ORDER XXXI

## HEARING OF THE SUIT

1. Rules 1, 2, 3, 16, 17 and 18 of Order XVIII in the First Schedule to the Code with respect to the hearing of suits and examination of witnesses shall apply in suits instituted before the Court.

2. Witnesses in attendance shall be examined orally in open Court and their evidence taken down in shorthand in the form of question and answer by such officers of the Court as may be appointed for the purpose.

3. The transcript of the shorthand note shall be signed by the officer recording the note and shall be deemed the deposition of the witness and shall form part of the record.

4. The party to any suit or matter in which the evidence has been taken in shorthand, and the witness whose evidence has been taken, shall be entitled upon payment of the prescribed fee to be furnished with a certified copy of the transcript.

## ORDER XXXII

## WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Rules 1, 2 and 3 of Order XXIII in the First Schedule to the Code with respect to the withdrawal and adjustment of suits shall apply in suits instituted before the Court.

2. No new suit shall be brought in respect of the same subject-matter until the terms & conditions, if any, imposed by the order permitting the withdrawal of a previous suit or giving leave to bring a new suit have been complied with.

## ORDER XXXIII PAYMENT INTO COURT

Order XXIV in the First Schedule to the Code with respect to payment into Court shall apply in suit instituted before the Court.

## ORDER XXXIV

## SPECIAL CASE

Rules 1, 3 and 5 of Order XXXVI in the First Schedule to the Code with respect to procedure by way of special case shall apply in suits instituted before the Court, except the words-‘which would have jurisdiction to entertain a suit the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement’ in sub-rule (1) of rule 3, the words 'claiming to be interested as plaintiff or plaintiffs' to the end of sub-rule (2) of rule 3; and the words ‘and upon the judgment so pronounced a decree shall follow’ in sub-rule (2) of rule 5.

## PART IV

## ORDER XXXV

## APPLICATIONS FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS

(Article 32 of the Constitution)

1. (1) Every petition under Article 32 of the Constitution shall be in writing and shall be heard by a Division Court of not less than five Judges provided that a petition which does not raise a substantial question of law as to the interpretation of the Constitution may be heard and decided by a Division Court of less than five Judges, and during vacation, by the Vacation Judge sitting singly.

(2) All interlocutory and miscellaneous applications connected with a petition under article 32 of the Constitution, may be heard and decided by a Division Court of less than five Judges, and during the vacation, by the Vacation Judge sitting singly, notwithstanding that in the petition a substantial question of law as to the interpretation of the Constitution is raised.

2. No court-fees shall be payable on petitions for habeas corpus or other petitions under Article 32 of the Constitution arising out of criminal proceedings, or in proceedings connected with such petitions.

### *Habeas Corpus*

3. A petition for a writ of habeas corpus shall be accompanied by an affidavit by the person restrained stating that the petition is made at his instance and setting out the nature and circumstances of the restraint:

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the petition shall be accompanied by an affidavit to the like effect made by some other person acquainted with the facts, which shall state the reason why the person restrained is unable to make the affidavit. The petition shall state whether the petitioner has moved the High Court concerned for similar relief and if so, with what result.

4. The petition shall be posted before the Court for preliminary hearing, and if the Court is of the opinion that a prima facie case for granting the petition is made out, a rule nisi shall issue calling upon the person or persons against whom the order is sought, to appear on a day to be named therein to show cause why such order should not be made and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.

5. On the return day of such rule or any day to which the hearing thereof may be adjourned, if no cause is shown or if cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty. If cause is shown and allowed, the rule shall be discharged. The order for release made by the Court, shall be a sufficient warrant to any gaoler, public official, or other person for the release of the person under restraint.

6. In disposing of any such rule, the Court may in its discretion make such order for costs as it may consider just.

*Mandamus, Prohibition, Certiorari, Quo-Warranto*, and other Directions or Orders.

7. A petition for a direction, or order, or writ including writs in the nature of mandamus, prohibition, quo-warranto or certiorari, shall set out the name and description of the petitioner, the nature of the fundamental right infringed, the relief sought and the grounds on which it is sought and shall be accompanied by an affidavit verifying the facts relied on, and at least seven copies of the petition and affidavit shall be lodged in the Registry. The petition shall also state whether the petitioner has moved the High Court concerned for similar relief and, if so, with what result.

8. The petition shall be posted before the Court for preliminary hearing and orders as to the issue of notice to the respondent. Upon the hearing, the Court, if satisfied that no fundamental right guaranteed by the Constitution has been infringed, or that the petition is otherwise untenable, shall dismiss the petition, and if not so satisfied, shall direct a rule nisi to issue to the respondent calling upon him to show cause why the order sought should not be made, and shall adjourn the hearing for the respondent to appear and be heard.

9. Upon making the order for a rule nisi, the Court may if it thinks fit, grant such ad interim relief to the petitioner as the justice of the case may require, upon such terms if any as it may consider just and proper.

10. (1) Unless the Court otherwise orders, the rule nisi together with a copy of the petition and of the affidavit in support thereof shall be served on the respondent not less than twenty-one days before the date fixed for the hearing of the rule. The rule shall be served on all persons directly affected and on such other persons as the Court may direct.

Affidavits in opposition shall be filed in the Registry not later than four days before the date appointed for the hearing, and affidavits in reply shall be filed not later than 2 P.M. on the day preceding the day of hearing. Copies of affidavits in opposition or reply shall be served on the opposite party or parties, and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties. Every party to the proceeding shall supply to any other party on demand and on payment of the proper charges, copies of any affidavit filed by him.

(2) At the hearing of rule nisi, if the Court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the Court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper.

11. The provisions contained in rules 1 to 4 and 6 to 10 respectively of Order XVIII relating to petitions shall, so far as may be applicable, apply to petitions under this Order.

#### ORDER XXXVI

#### APPLICATIONS FOR TRANSFER OF CRIMINAL PROCEEDINGS UNDER SECTION 527 OF THE CRIMINAL PROCEDURE CODE

1. Every petition for transfer under section 527 of the Code of Criminal Procedure 1898 shall be in writing. It shall set out concisely in separate paragraphs the facts and particulars of the case, the relief sought and the grounds therefore and shall be supported by an affidavit or affirmation.

2. The petition shall be posted before the Court for preliminary hearing and orders as to issue of notice. Upon the hearing the Court, if satisfied that no *prima facie* case for transfer has been made out or that the petition is otherwise not tenable, shall dismiss the petition; and if upon such hearing the Court is satisfied that a *prima facie* case for granting

the petition is made out, it shall direct that notice be issued to the respondent to show cause why the order sought for should not be made; such notice shall be given to the Attorney General for India, the Advocate-General of the State in which the case or appeal sought to be transferred is pending, to the accused person where he is not the applicant and to such other parties interested as the Court may think fit to direct.

3. The notice shall be served not less than twenty-one days before the date fixed for the final hearing of the petition. Affidavits in opposition shall be filed in the Registry not later than four days before the date appointed for hearing and the affidavit in reply shall be filed not later than 2 P.M. preceding the day of the hearing of the petition. Copies of affidavits in opposition and in reply shall be served on the opposite party or parties and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties.

4. Where the petition is dismissed the Court, if it is of opinion that the application was frivolous or vexatious, may order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

#### PART V

#### ORDED XXXVII

#### SPECIAL REFERENCE UNDER ARTICLE 143 OF THE CONSTITUTION

1. On the receipt by the Registrar of the order of the President referring a question of law or fact to the Court under article 143 of the Constitution the Registrar shall give notice to the Attorney-General for India to appear before the Court on a day specified in the notice to take the directions of the Court as to the parties who shall be served with notice of such reference, and the Court may, if it considers it desirable, order that notice of such reference, shall be served upon such parties as may be named in the order.

2. Subject to the directions of the Court the notice shall require all such parties served therewith as desire to be heard at the hearing of the reference to attend before the Court on the day fixed by the order to take the directions of the Court with respect to statements of facts and arguments and with respect, to the date of the hearing.

3. Subject to the provisions of this Order, on a reference under article 143 of the Court shall follow as nearly as may be the same procedure as is followed in proceedings before the Court in the exercise of its original jurisdiction, but with such variations as may appear to the Court to be appropriate and as the Court may direct.

4. After the hearing of the reference under article 143 of the Constitution the Registrar shall transmit to the President the report of the Court thereon.



5. The Court may make such order as it thinks fit as to the costs of all parties served with notice under these rules and appearing at the hearing of the reference under article 143 of the Constitution.

PART VI

ORDER XXXVIII

REFERENCE UNDER ARTICLE 317(1) OF THE CONSTITUTION

1. On receipt by the Registrar of the order of the President referring to the court a case for inquiry under article 317(1) of the Constitution, the Registrar shall give notice to the Chairman or member of the Public Service Commission concerned and to the Attorney General for India or the Advocate-General of the particular State to appear before the Court on a day 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.

3. After the hearing of the reference under article 317(1) of the Constitution the Registrar shall transmit to the President the Report of the Court.

4. No court-fees or process fees shall be payable in connection with any reference dealt with by the Court under this Order.

Part VI-A

ORDER XXXVIII-A

REFERENCE UNDER SECTION 267 OF THE INCOME-TAX ACT, 1961

1. A reference under section 267 of the Income-Tax Act, 1961, shall be forwarded to the Registrar of the Supreme Court.

2. On receipt of such reference, the reference shall be numbered as "Tax Reference Case No.....of 20 .....". No court fee shall be payable on such reference.

3. The reference shall be in the form of a statement of case containing numbered paragraphs setting out all relevant facts and proceedings which have a bearing on the question or questions raised in chronological order with relevant dates. It shall contain an account which necessitates the Reference.

4. The Income-Tax appellate Tribunal, shall, together with the reference through the President, submit the following documents:-

- (i) A copy of the order of the Income Tax Officer;
- (ii) Memorandum of appeal to the Appellate Assistant Commissioner.
- (iii) A copy of the order of the Appellate Assistant Commissioner;
- (iv) Memorandum of appeal to the Appellate Tribunal
- (v) A copy of the order of the Income Tax Appellate tribunal under section 254 of the Income-Tax Act, 1961;
- (vi) A copy of the application for reference under section 256 of the Income-tax Act, 1961;
- (vii) Such other documents, as in the opinion of the Income Tax Appellate Tribunal, may be required by the Supreme Court at the hearing of the reference.

5. The Income Tax Tribunal shall together with the reference prepare and transmit through its President at the expense of the party who moved the application under section 256 of the Income-tax Act, 1961, along with the order of Reference, three copies of the transcript in of the documents mentioned in rule 4, one of which shall be duly authenticated.

6. When the Income Tax appellate tribunal refers a case to the Supreme Court and transmit the transcript record of the said reference, it shall give notice of that fact to the parties, calling upon them to take such steps in the Supreme Court as may be necessary for bringing the reference to a final hearing and certify to the Registrar of the Court the date or dates of service of notice.

7. The parties to the reference under section 256 of the Income Tax Act, 1961, shall, within 30 days of the service of the notice referred in rule 6, enter appearance in this court and take further steps for bringing the reference to a final hearing.

8. Upon receipt from the Income Tax Appellate Tribunal of the English transcript of the record as aforesaid the Registrar of the Court shall require of the party, who moved the application under section 256 of the Income Tax Act, 1961, to deposit the charges for printing the said record within such time as he may prescribe, but not exceeding 30 days and with all convenient speed arrange for preparation thereof.

9. The rules contained in Order XV, shall apply mutatis mutandis to such Reference with regard to the preparation of record and authentication thereof.

10. Upon the receipt of the reference along with be documents mentioned in rule 4, the Registrar shall lay the matter before the Chief Justice Of India who shall appoint a bench of not less than three Judges to hear the reference.

11. Unless otherwise ordered by the Court, costs shall be taxed by the Taxing Officer under the provisions of second Schedule to these rules as may be applicable.

12. A copy of the order made by the Court hearing the reference, shall be sent forthwith to the Income-tax Appellate Tribunal under the seal of the Court and the signature of the Registrar.

13. Save as otherwise provided by the rules contained in this Order, the provisions of other rules (including the rules relating to appearance of Advocates, but excluding rule 7, 35, 36 and 37 of Order XV) shall so far as may apply to references under section 257 of the Income-tax Act, 1961;

## PART VII

### ORDER XXXIX

#### ELECTION PETITIONS UNDER PART III OF THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS ACT, 1952 (31 OF 1952)

1. In this Order, unless the context or subject matter otherwise requires:

(a) 'the Act' means the Presidential and Vice-Presidential Elections Act, 1952:

(b) the words defined in sections 2 and 13 of the Act shall have the respective meanings assigned to them by those sections.

2. An application calling in question an election shall only be by a petition made and presented in accordance with the provisions of this Order.

3. The petition shall be made on a court-fee stamp of the value of rupees two hundred and fifty and shall be signed by the petitioner, or all the petitioners, if there are more than one, or by a duly authorised advocate on record of the Court on his or their behalf.

4. The petition shall be divided into paragraphs, numbered consecutively, each paragraph being confined to a distinct portion of the subject, and shall be printed or typed legibly on one side of standard petition-paper, demy-foolscap size, or the size of 29.7cm X 21 cm or on paper of equally superior quality.

5. The petition shall state the right of the petitioner under the Act to petition the Court and briefly set forth the facts and grounds relied on by him to sustain the relief or reliefs claimed by him.

6. The allegations of fact contained in the petition shall be verified by an affidavit to be made personally by the petitioner or by one of the petitioners, if more than one:

Provided that where the petitioner is unable to make such affidavit by reason of absence, illness or other sufficient cause it may with the sanction of the Judge in Chambers to be given at the time of the presentation of the petition, be made by any person duly authorised by the petitioner and competent to make the same.

7. A petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19 of the Act, by any candidate at such election, or by ten or more electors who may join together as petitioners.

8. Where the petitioner claims a declaration under clause (a) of section 16 of the Act, he shall implead the returned candidate as the respondent, and where he claims a declaration under clause (b) of the said section, he shall implead as respondents all candidates, other than himself, duly nominated at the election.

9. The petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12 of the Act, but not later than thirty days from the date of such publication.

10. The presentation of the petition shall be made by delivering it to the Registrar of the Court in his Chambers in the Court House, unless it is presented before the Judge in Chambers under rule 6.

11. The petition shall also lodge, along with the petition at least twelve copies of the petition and of all documents which accompany it.

12. Upon the presentation of the petition, the petitioner, shall deposit a sum of two thousand rupees in cash with the Registrar or Deputy Registrar of the Court as security for the payment of all costs that may become payable by the petitioner.

13. Upon the presentation of the petition, the Judge in Chambers, or the Registrar, before whom it is presented, may give such directions for service of the petition and advertisement thereof as he thinks proper and also appoint a time for the hearing of the petition.

14. Unless otherwise ordered, the notice of the presentation of the petition, accompanied by a copy of the petition, shall within five days of the presentation thereof or

within such further time as the Court may allow, be served by the petitioner or his advocate on record on the respondent or respondents the Secretary to the Election Commission, the Returning Officer and the Attorney General for India. Such service shall be affected personally or by registered post, as the Court or Registrar may direct. Immediately after such service the petitioner or his advocate on record shall file with the Registrar an affidavit of the time and manner of such service.

15. Unless dispensed with by the Judge in Chambers or the Registrar, as the case may be, notice of the presentation of the petition shall be published in the Official Gazette and also advertised in newspapers at the expense of the petitioner or petitioners, fourteen clear days before the date appointed for the hearing thereof in such manner as the Court or the Registrar may direct.

16. Every elector shall on payment of the usual fees, be entitled within twenty-four hours after such payment, to be furnished by the petitioner or his advocate on record with a copy of the petition and of the affidavit in verification thereof and shall also be entitled upon payment of the prescribed fees to obtain copies from the Court.

17. A person on whom the notice of the presentation of the petition has been served or any other candidate or an elector who intends to appear on the hearing of the petition shall leave with, or send by registered post to, the petitioner or his advocate on record, notice of such intention signed by him or his advocate on record, if any. Such notice shall be served or if sent by registered post shall be posted in time to reach the addressee not later than two clear days before the day appointed for the hearing of the petition. No person who has failed to comply with this rule shall be allowed to appear on the hearing of the petition without the leave of the Court.

18. An affidavit intended to be used by a person other than the petitioner either in support of the petition or in opposition to the same shall be filed not less than five days before the date fixed for the hearing thereof and notice of the filing thereof shall be given to the petitioner or his advocate on record on the day on which the affidavit is filed. If any person fails to comply with this rule the affidavit, unless the Court otherwise directs, shall not be used at the hearing of the petition.

19. An affidavit intended to be used in reply to an affidavit filed in opposition to, or in support of, the petition shall be filed not less than two days before the date fixed for the hearing of the petition. Notice of such filing shall be given forthwith to the person by whom the affidavit in opposition to, or in support of, the petition, as the case may be, was filed or to his advocate on record.

20. Every petition calling in question an election shall be posted before and be heard and disposed of by a Bench of the Court consisting of not less than five Judges.

21. The petition shall not be withdrawn, save with the leave of the Court to be obtained upon application made for the purpose by notice of motion.

22. Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners given in writing.

23. An application for leave to withdraw a petition which has been advertised in accordance with the provisions of rule 15 shall not be heard at any time before the date fixed in the advertisement for the hearing of the petition.

24. No application for withdrawal shall be granted, if in the opinion of the Court such application has been induced by any extraneous or improper bargain or consideration.

25. When a petitioner applies for leave to withdraw his petition or asks that it be dismissed or that the hearing thereof be adjourned without mentioning sufficient cause or fails to appear in support thereof or if appearing does not apply for an order in terms thereof or if for any other sufficient reason the Court thinks so to do, the Court may, upon such terms as it thinks just, make an order permitting the petitioner to withdraw or striking off the petitioner from the petition and may, upon such terms as it thinks just, substitute as petitioner any other candidate or any other elector or body of electors who in its opinion would have a right to present a petition and is desirous of prosecuting the petition already admitted.

26. If no order for substitution of a new petitioner or petitioners be made by the Court under rules but the Court only permits the withdrawal of the petition, or strikes off the petitioner or petitioners from the petition, notice of the order of withdrawal of the petition or striking off the petitioner or petitioners shall be published by the Registrar in the Official Gazette and in the newspapers in which the original petition had been advertised under rule 15 and the Court may, on the application made within fourteen days of the publication of such notice in the Official Gazette by any other candidate or another ten electors who might himself or themselves have been a petitioner or petitioners, make an order upon such terms as it thinks fit, substituting such petitioner or petitioners in place of the petitioner or petitioners withdrawing or not appearing at the hearing or not proceeding with the petition. If no such application is made within the time aforesaid or, if made, the Court does not think fit to grant the same, the original petition shall stand dismissed.

27. Where the Court allows a candidate or any elector or body of electors to be substituted as petitioner or petitioners under rule 25 or rule 26, the Court shall appoint a date for the hearing of the petition and such substituted petitioner or petitioners shall within seven days from the making of the order file a clean copy of the petition with such consequential amendments as may be necessary by reason of the order of substitution therein and shall also file an affidavit verifying such amendments. The amended petition shall be treated as the petition for calling in question the election.

28. Upon hearing the application for withdrawal or at the time of making an order for substitution, the Court may if it thinks fit, by order direct that the amount deposited by the original petitioner or petitioners as security for the costs of the respondent be applied in payment of the costs incurred by them up to the date of the substitution of the new

petitioner or petitioners, so far as it may be necessary, and the balance, if any shall be refunded to the original petitioner or petitioners within seven days from the date of the order of substitution or such further time as the Court may allow.

29. Unless otherwise ordered by the Court, the substituted petitioner or petitioners shall deposit with the Registrar a sum of two thousand rupees as and by way of security for the costs of the respondents.

30. An election petition shall abate by the death of a sole petitioner or in case of several petitioners on the death of the survivor of them:

Provided that there shall be no abatement after the hearing of the petition has been concluded.

31. The abatement of a petition shall not effect the liability of the amount deposited by the petitioner as security for costs or the estate of the petitioner or petitioners for the payment of costs previously incurred.

32. On the abatement of a petition under rule 30, notice of such abatement having taken place shall be published by the Registrar in the Official Gazette and the newspapers in which the original petition had been advertised and the Court may on the application made within fourteen days of the publication of such notice in the Official Gazette by any other candidate or body of the electors, who might have been a petitioner or petitioner as the case may be make an order, upon such terms as it thinks fit, substituting him or them in the place of the original petitioner or petitioners and the procedure prescribed in rule 27 and the provisions of rule 29 shall apply in relation to the substituted petitioner or petitioners.

33. If before the conclusion of the hearing of an election petition any contesting respondent dies or gives notice that he does not intend to oppose the petition and there is no other respondent who is opposing the petition, the Registrar shall cause a notice of such facts to be published in the Official Gazette and the newspapers in which the original petition had been advertised and any candidate or ten electors who might have been a petitioner or petitioners may, within fourteen days after such publication, apply to be substituted in the place of the respondent dying or not proceeding with his opposition to oppose the petition and the Court may make such order upon such terms as it thinks fit.

34. Subject to the provisions of this Order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be the procedure in proceedings before the Court in the exercise of its original jurisdiction.

35. At the conclusion of the hearing of the election petition, the Court shall make an order at once or on some future day of which due notice shall be given by the Registrar to all persons who appeared at the hearing of the petition.

36. After the order of the Court has been announced, the Registrar shall send a copy thereof to the Central Government for publication in the Official Gazette.





PART VIII  
ORDER XL  
REVIEW

1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the grounds mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

2. (1) An application for review shall be by a petition and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review and shall, unless otherwise ordered by the Court, be accompanied by a certificate from the Advocate who appeared at the hearing of the case for the party seeking review, or where the party appeared in person, from any Advocate of this Court, that it is supported by proper grounds. The certificate shall be in the form of a reasoned opinion.

(2) No application for review in a civil proceeding shall be entertained unless the party seeking review furnishes to the Registrar of this Court at the time of filing the petition for review cash security to the extent of two thousand rupees for the costs of the opposite party.

3. An application for review shall be posted before the Court for preliminary hearing and order as to the issue of notice to the opposite party. Upon such hearing, the Court may either dismiss the petition or direct a notice to the opposite party and adjourn the hearing for such party to be heard. A petition for review shall as far as practicable be posted before the same Judge or Bench of Judges that delivered the judgement or order sought to be reviewed.

4. Where on an application for review the Court reverses or modifies its former decision in the case on the ground of mistake of law or fact, the Court, may, if it thinks fit in the interests of Justice to do so, direct the refund to the petitioner of the court-fee paid on the application in whole or in part, as it may think fit.

PART IX  
ORDER XLI  
COSTS

1. Subject to the provisions of any statute or of these rules, the costs of and incidental to all proceedings shall be in the discretion of the Court Unless the Court otherwise orders an intervener shall not be entitled to costs.

2. Where it appears that the hearing of any suit or matter cannot conveniently proceed by reason of the advocate on Record of any party having neglected to attend personally or by some proper person on his behalf of having omitted to deliver any paper necessary for the use of the Court which are in his possession and which according to the practice ought to have been delivered, the advocate on record shall personally pay to all or any of the parties such costs as the Court may think fit to award.

3. Where in any proceeding, costs are awarded to any party, the Court may direct the payment of a sum in gross in lieu of taxed costs and may further direct by and to whom the said sum shall be paid.

ORDER XLII  
TAXATION

1. The Registrar, or such other officer as the Chief Justice may appoint for the purpose, shall be the Taxing Officer of the Court.

2. The Taxing Officer shall allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, and shall not allow any costs, charges and expenses which appear to him to have been incurred or increased unnecessarily or through negligence or mistake.

3. Where in the opinion of the Taxing Officer a fee ought to be allowed for any matter not provided for in these rules or a question arises in taxation on which he considers it necessary to obtain the directions of the Chamber Judge, the Taxing Officer may refer such matter to the Chamber Judge for orders.

4. Where the Taxing Officer is of opinion that any costs have been injuriously or unnecessarily occasioned by the negligence or improper conduct of any Advocate on record, he shall not allow any charge for the same without the leave of the Court.

5. The Taxing Officer shall without delay bring to the notice of the Chamber Judge any wrong charge which appears to him to have been wilfully made in any bill of costs.

6. Every bill of costs lodged for taxation between Party and Party shall contain a certificate from the Advocate lodging the same that the fee paid to him by his client or agreed to be paid to him is not less than the amount of fee claimed by him in the Bill,

7. Every bill of costs shall be properly dated throughout and shall show in a column for the purpose the money paid out of pocket.

8. Every bill of costs shall be certified by the signature of the advocate on record in the case.

9. The fees for taxation and registration of every bill of costs shall be paid in court-fee stamps when the bill is lodged for taxation.

10. Every bill of costs shall, wherever possible, be accompanied by vouchers, and every item of disbursement and the cause thereof shall be distinctly specified, and no payment out of pockets shall be allowed except on production of the necessary voucher, or in the case of advocate's fee, without the signature of the Advocate that the fee has been paid, or agreed to be paid.

11. Within eight weeks from the date of the judgment or order awarding costs; or within such further time not exceeding four weeks as the Taxing Officer may for good cause allow, the party to whom the costs have been awarded shall lodge in the Registry the bill of costs and vouchers. He shall also serve on the opposite party a copy of the bill of costs and file in the Registry proof of such service. The Taxing Officer shall fix a date for the taxation of the bill and shall notify the parties of the date fixed.

12. A bill of costs presented out of time shall be returned to the party and the Taxing Officer shall not receive or tax the same except by order of the Chamber Judge.

13. Except as otherwise provided in these Rules or by any law for the time being in force, the fees set out in the Second and Fourth Schedules to these Rules may be allowed to Advocates and officers of Court respectively.

14. No retaining fee to an advocate shall be allowed on taxation as between party and party.

15. Where an advocate appears for different parties in the same suit, appeal or matter, only one set of fees shall be allowed, unless the Court otherwise orders.

16. Where two or more appeals arising out of a single proceeding are heard together and costs are awarded in both or all of them, only one set of Advocate's fee shall be allowed for the hearing, unless the Court or the Chamber Judge otherwise directs.

17. In defended appeals, suits and references under articles 143 and 317 (1) of the Constitution, the first day's hearing fee shall be allowed in full, for the first four and a half

hours of the hearing or part thereof, in accordance with the Schedule subject to the provisions contained in rules 19 and 20.

18. No refresher shall be allowed unless the hearing has lasted for more than four and half hours, and the Taxing Officer shall have discretion to reduce the refresher or to allow a refresher having regard to the duration of the hearing after the first four and a half hours.

19. Where the hearing of a part-heard case is held up on account of the Court being occupied with any miscellaneous matters, the time taken in the hearing of such miscellaneous matters shall be taken into consideration by the Taxing Officer the purposes of a refresher.

20. In cases involving less than twenty thousand rupees in value, the Taxing Officer shall have discretion to reduce the fees, including the first day's hearing fee and the 'acting fee' suitably according to the nature of the case.

21. Where an appeal is compromised prior to its being set down for hearing, the fees to be allowed to advocate under item 1 of Part 1 of Schedule II shall be half the amounts specified therein subject to the terms of the compromise.

22. The fees provided in items 3 to 8 of Part I of the Second Schedule shall be subject to reduction in the discretion of the Taxing Officer according to the nature of the case.

#### *Rules Relating to Advocates and Client Taxation*

23. Where a dispute arises between the advocate on record and his client as to the fees and charges payable to the advocate, either party may apply to the Chamber Judge for an order to have the bill taxed and, on an order for taxation being made, the Taxing Officer may proceed to tax the bill. The application, when made by the Advocate, shall be accompanied by a copy of the bill sought to be taxed:

Provided that where the client has expressed his consent in writing to the taxation of costs between himself and his advocate on record in any proceeding, the advocate may present his bill of costs in that proceeding for taxation without an order of the Chamber Judge, and the Taxing Officer shall thereupon proceed to tax the bill.

24. In every case of taxation between advocate and his client, the client shall be duly summoned by the Taxing Officer to attend the taxation, and the summons shall be served on the client at least two weeks prior to the date fixed for taxation.

25. Subject to any agreement in writing to the contrary, the rules regulating the taxation of costs between party and party shall be applicable as far as may be to taxation between advocate and client.

26. No agreement between the advocate on record and his client to pay fees higher than those prescribed in the Second Schedule shall be recognised unless the same has been recorded in writing and is signed by the client and has been filed before the commencement of the hearing.

### *Explanation*

For the purpose of this rule "agreement in writing" shall include the correspondence between the advocate on record and his client from which such an intention may be gathered.

27. Where the Taxing Officer is of the opinion that any such agreement filed as aforesaid is unfair or unreasonable, he may place the matter before the Chamber Judge to be taken thereon and the Judge may make such order as he may think just, and the taxation shall proceed in accordance with such order:

Provided that where fees are payable by the client personally or out of a fund belonging entirely to him, any fees actually paid by the advocate on record in the Schedule shall not be called in question if the payment of such fee is duly authorised by the client.

28. Where the amount of a bill of costs between advocate and client is reduced by 1/6th or more, the advocate's fee for attending taxation shall be disallowed.

29. An advocate whose bill against his client has been taxed may apply to the Chamber Judge for an order against his client or his legal representative for payment of the sum allowed on taxation or such sum thereof as may remain due to him. The order so made may be transmitted for execution to such court as the Chamber Judge may direct.

### *Review of Taxation and Miscellaneous Provisions.*

30. Any party who is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of the items in a bill of costs may apply to the Taxing Officer to review the taxation in respect thereof.

31. An application for review shall be made within three weeks and a copy of the application shall be served on the opposite party.

32. Objections in writing specifying concisely the items or parts of the bill objected to and the grounds for the objections shall be served with the notice on the other party, and a copy thereof shall at the same time be carried in before the Taxing Officers.

33. Objections which were not taken in at the time of the taxation shall not be taken in at the stage of review, unless allowed by the Taxing Officer.

34. Upon application to review his order, the Taxing Officer shall reconsider his taxation upon the objections carried in and may, where he thinks fit, receive further evidence in respect thereof, and shall state in a certificate the grounds of his decision thereon and any special facts or circumstances relating thereto.

35. Any party dissatisfied with the decision of the Taxing Officer on review may, not later than seven days from the date of the decision, or within such further time as the Taxing Officer or the Chamber Judge may allow, apply to the Chamber Judge for an order to review the decision of the Taxing Officer and the Chamber Judge may thereupon make such order as may seem just.

36. No evidence shall be received by the Chamber Judge upon the review of the Taxing Officer's decision which was not before the Taxing Officer when he taxed the bill or review his taxation unless the Chamber Judge otherwise directs.

37. The certificate of the Taxing Officer by whom any bill has been taxed shall unless it is set aside or altered by the Chamber Judge, be final as to the amount of the costs covered thereby.

38. The allowances to be made to witnesses per diem shall be such as the Taxing Officer may think reasonable having regard to the profession or status of the witness.

39. Witnesses residing more than five miles from the place where the Court sits shall be allowed travelling expenses according to the sums reasonably and actually paid by them and shall also be allowed such sum for subsistence money and carriage hire as the Taxing Officer, having regard to the daily allowances under Rule 38, considers reasonable.

40. Every person summoned to give evidence shall have tendered to him with the summons a reasonable sum for his travelling expenses (if any) and for the first day's attendance and shall, if obliged to attend for more than one day, be entitled, before giving his evidence, to claim from the party by whom he has been summoned the appropriate allowances and expenses for each additional day that he may be required to attend.

41. Witnesses who have not been paid such reasonable sums for their expenses as the Court allows by its Rules may apply to the Court at any time in person to enforce the payment of such sum as may be awarded to them.

42. For the purposes of these rules, a folio shall be deemed to consist of two hundred words; seven figures shall be counted as one word; and more than half a folio shall be reckoned as a folio.

43. Where the costs of any proceeding which terminated prior to the 26th of January 1954, have to be taxed, such costs shall be taxed in accordance with the taxation rules which were in force prior to the said date.

PART X

Miscellaneous

ORDER XLIII

NOTICE OF PROCEEDINGS TO THE ATTORNEY-GENERAL FOR INDIA OR  
ADVOCATE-GENERAL OF STATES

1. The Court may direct notice of any proceedings to be given to the Attorney-General for India or to the Advocate General of any State, and the Attorney-General for India or the Advocate-General to whom such notice is given may appear and take such part in the proceedings as he may be advised.

2. The Attorney-General for India or the Advocate-General of any State may apply to be heard in any proceedings before the Court, and the Court may, if in its opinion the justice of the case so requires, permit the Attorney-General for India or the Advocate-General so applying to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.

ORDER XLIV

FORMS TO BE USED

1. Every writ, summons, orders, warrant or other mandatory process shall bear the attestation of the Chief Justice, and shall be signed by the Registrar with the day and the year of signing, and shall be sealed with the seal of the Court.

2. The forms set out in the Fifth Schedule to these rules or forms substantially to the like effect with such variations as the circumstances of each case may require, shall be used in all cases where those forms are appropriate.



## 162

**ORDER XLV****SERVICES OF DOCUMENTS**

1. Except where otherwise provided by any Statute or prescribed by these Rules, all notices, orders or other documents required to be given to, or served on, any person shall be served by the Registry in the manner provided by the Code for the service of a summons.
2. Service of any notice, order or other document on the advocate on record of any party shall be deemed sufficient service on the party whom he represents and may be affected by delivering it to the advocate on record or by leaving it with a clerk in his employ at his office.
3. Service of any notice, order or other document upon a person who resides at a place within the territory of India may ordinarily be effected by posting a copy of the document required to be served in a pre-paid envelope registered for acknowledgement addressed to the party or personally at the place where he ordinarily resides and through the District Judge concerned:  
  
        Provided that the Registrar may direct in a particular case or class of cases, that the service shall be effected in the manner provided by the Code for the service of summons.
4. A document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.
5. Except where the notice or process has been served through Registry, the party required to effect the service shall file an affidavit of service, along with such proof thereof as may be available stating the manner in which the service has been effected.
6. Where the notice, order or other document has been served through another court, the service may be proved by the deposition or affidavit of the serving officer made before the court through which the service was effected.
7. Service effected after Court hours shall for the purpose of computing any period of time subsequent to that service be deemed to have been effected on the following day.

**163****ORDER XLVI****COMMISSIONS**

1. Order XXVI in the First Schedule to the Code with respect to commissions shall apply except rules 13, 14, 19, 20, 21 and 22 thereof.
2. An application for the issue of a commission may be made by summons in Chambers after notice to all parties who have appeared or ex parte where there has been no appearance.
3. The Commissioner shall if the advocate or other person examining a witness so desires, record a question disallowed by the commissioner and the answer thereto, but the same shall not be admitted as evidence until the Court before whom the deposition is put in evidence shall so direct.
4. The Court may, when the commission is not one for examination on interrogatories, order that the commissioner shall have all the powers of a court under Chapter X of the India Evidence Act, 1872 (1 of 1872) to decide question as to the admissibility of evidence, and to disallow any question put to a witness.
5. Unless otherwise ordered, the party at whose instance the commission is ordered to issue, shall lodge in the Court copies of the pleadings in the case within twenty-four hours of the making of the order and those copies shall be annexed to the commission when issued.
6. Any party aggrieved by the decision of the commissioner refusing to admit evidence or allow a question to be put may apply to the Court to set aside the decision and for direction to the Commissioner to admit the evidence or to allow the question but no such application shall be entertained if made later than seven days after the examination of the witness has been closed.
7. After the deposition of any witness has been taken down and before it is signed by him, it shall read over and where necessary, translated to the witness, and shall be signed by him and left with the commissioner who shall subscribe his name and the date of the examination.
8. Commissions shall be made returnable within such time as the Court may direct.

## 164

**ORDER XLVII****POWER TO DISPENSE AND INHERENT POWERS**

1. The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as it may consider just and expedient.
2. An application to be excused from compliance with the requirements of any of the rules shall be addressed in the first instance, to the Registrar, who shall take instructions of the Judge in Chambers thereon and communicate the same to the parties, but, if, in the opinion of the Registrar, it is desirable that the application should be dealt with in open Court, he may direct the applicant to serve the other party with a notice of motion returnable before the Court.
3. The Court may enlarge or abridge any time appointed by these Rules or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any enlargement may be ordered although the application therefore is not made until after the expiration of the time appointed or allowed.
4. The Court may at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in Rule 8 of order XXIV of these Rules, may issue summons to persons whose attendance is required either to give evidence or to produce documents, or order any fact to be proved by affidavit.
5. When there are two or more appeals arising out of the same matter the Court may at any time either on its own motion or on the application of any party order that the appeals be consolidated and make such orders for security of the cost as the justice of the case requires.

Unless otherwise ordered by this Court the liability of the parties to pay separate Court fees shall not be affected by any order for consolidation.

6. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

## PART XI

### ORDER XLVIII

#### DESTRUCTION OF RECORDS

1. There shall be an index of the records in every case in the form prescribed below:-

Index of Papers.

In

Civil Appeal No.....of..... (or Criminal Appeal No..... or Petition No..... or Suit No.....).

#### *Cause Title*

Serial No.	Date of filing the paper in the record	Description of paper	No. of part to which it belongs	Remarks

2. The record in each case shall be divided into two parts, Part I to be preserved permanently and Part II to be preserved for a period of not less than three and not more than six years as hereinafter provided.

3. Each paper as and when it is filed in the record shall be numbered and entered in the index and classified in such manner as the Registrar may direct under the appropriate Part to which it belongs.

4. The period for which any particular record is to be preserved shall be reckoned from the date of the final decree or order in the proceeding to which the record belongs, and in case an application for a review is filed against the decree or order, from the date of the final decree or order made on review. In the case of registers, the period shall be reckoned from the date of the last entry in the register.

5. The Registrar may direct that any paper assigned to Part II be transferred to Part I for being preserved permanently.

6. Records which do not fall under Part I or Part II as classified below shall be referred to the Registrar who shall decide the part under which they should be included.

7. When any record is ripe for destruction, it shall either be burnt or sold as waste-paper, as the Registrar may in his discretion direct.

8. Where the record is sold as waste paper, the sale proceeds shall be credited to the Central Government.

9. As soon as a record is destroyed, a note shall be made in the Index against the record showing that it has been destroyed and the date of destruction.

#### 10. Part I-

The following papers shall be included under Part I (to be preserved permanently): -



1. Index
2. Judgment
3. Decree or Order
4. Order for costs
5. Pleadings (plaint, written statement, set off and counter claim)
6. Authenticated copy of the printed record.
7. Petition of appeal
8. Statement of Case
9. Original Petitions including special leave petitions and Article 32 petitions.
10. Interlocutory applications other than applications for condonation of delay and other formal applications
11. Orders on petitions
12. Reference received under Article 143
13. Reference received under Article 317(1)
14. Memorandum of compromise which results in a decree: award of arbitrators,
15. Title deeds, if any remaining unreturned to any party.
16. Any other records or papers which the Registrar may direct to be included in this Part.

## Registers

1. Minutes Book.
2. Registers of Suits, Civil, and Criminal appeals, petitions under article 32, special leave petitions, special references and miscellaneous petitions.
3. Register of papers received.
4. Rolls of advocates and enrolment files.

### Part II-

The following papers shall be included in Part II and shall be destroyed after a period of three or six years as indicated below:-

- |   |  |             |
|---|--|-------------|
| <ol style="list-style-type: none"> <li>1. Appearance, power of attorney and Vakalatnama</li> <li>2. Affidavits</li> <li>3. Taxation files including bills of costs</li> <li>4. Register of bills of costs</li> <li>5. Despatch register</li> </ol>  |   | Six years   |
| <ol style="list-style-type: none"> <li>6. Surplus copies of printed records, and of pleadings and petitions.</li> <li>7. Applications for condonation of delay and such other formal applications.</li> <li>8. Correspondence in cases.</li> <li>9. Unclaimed documents filed by parties other than title deeds.</li> <li>10. Office notes in the case files.</li> <li>11. Copies of summons and notices.</li> <li>12. Copying register.</li> </ol> |  | Three years |

## PART XII

### ORDER XLIX

#### APPEALS AND OTHER PROCEEDINGS TRANSFERRED UNDER CLAUSE (4) OF ARTICLE 374 OF THE CONSTITUTION

The rules contained in the foregoing Orders shall apply, so far as may be, to all appeals and other proceedings, transferred to the Court under clause (4) of article 374 of the Constitution and pending in it in respect of all, stages subsequent to the transfer.

### FIRST SCHEDULE

#### Rules as to Printing of Record

1. The record in appeals to the Court shall be printed in the form known as demy quarto on both sides of the paper with single spacing.

2. The size of the paper used shall be such that the sheet, when folded and trimmed, will be about 11 inches in height and 8 inches in width.

3. The type to be used in the text shall be pica type, but "Long Primer" shall be used in printing accounts, tabular matter and notes. Every tenth line shall be numbered in the margin.

4. Records shall be arranged in two parts in the same volume, where practicable, viz –

Part I – The pleadings and proceedings, the transcript of the evidence of the witnesses, the judgments, decrees, etc., of the courts below, down to the order admitting the Appeal.

Part II – The exhibits and documents.

5. The Index to Part I shall be in chronological order, and shall be placed at the beginning of the volume. The Index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the Index to Part I.

6. Part I shall be arranged strictly in chronological order, i.e., in the same order as the Index.

Part II shall be arranged in the most convenient way for the use of the Court, as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order, mixing plaintiff's and defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter such as:

(a) A series of correspondence, or

(b) Proceedings in a suit other than the one under appeal

shall be kept together. The order in the record of the documents in Part II will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties will be responsible for arranging the record in proper order for the Court, and in difficult cases counsel be asked to settle it.

7. The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark.

8. Each document shall have a heading which shall consist of the number of exhibit mark and the description of the document in the Index, without the date.

9. Each document shall have a heading which shall be repeated at the top of each page over which the document extends, viz.-

## Part I

(a) Where the case has been before more than one court, the short name of the court shall first appear. Where the case has been before only one court, the name of the court need not appear.

(b) Heading of the document shall then appear consisting of the number and the description of the documents in the Index, with the date, except in the case of oral evidence.

(c) In the case of oral evidence, 'Plaintiff's evidence' or 'Defendant's evidence' shall appear next to the name of the court and then the number in the Index and the witness's name, with 'examination', 'cross-examination' or 're-examination', as the case may be.

## Part II

The word 'Exhibit' shall first appear and next to it the exhibit mark and the description of the document in the Index with the date.

Sufficient space shall be left after the heading to distinguish it from the rest of the matter printed on the page.

10. The parties shall agree to the omission of formal and irrelevant document but the description of the document may appear (both in the Index and in the record), if desired, with the words 'not printed' against it.

A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be printed in full, unless counsel advises, but the parties shall agree to short extracts being printed as specimens.

11. In cases where maps are of an inconvenient size or unsuitable in character the appellant shall, in agreement with the respondent, prepare maps drawn properly to scale and of reasonable size, showing as far as possible, the claims of the respective parties, in different colours.



## SECOND SCHEDULE

*Fees payable to advocates*

## Part I

		Fee on Brief not exceeding	Refresher not exceeding
		Rs.	Rs.
1. Defended appeals, suits or references under article 143 or article 317 (1) of the Constitution or defended petitions under article 32 of the Constitution.	Leading counsel	600	300
	Associate advocate, if any	300	150
	Advocate-on-record instructing	300	150
2. Undefended appeals ..	One fee ..	350	No refresher
3. Petitions for special leave	Leading Council ..	200	No refresher
	Advocate-on-record when not pleading but only instructing	100	
4. Undefended petitions under article 32 of the Constitution.	Leading counsel ..	200	100
	Associate advocate or Advocate-on-record when not pleading but only instructing	150	
5. Notices of motion other than petitions under article 32 of the Constitution when opposed.	Leading Counsel ..	150	No refresher
	Advocate-on-record ..	100	
6. Petitions in court for review.	Leading Counsel ..	200	No refresher
	Advocate-on-record ..	150	
7. Opposed applications or investigations in Chambers.	One fee ..	150	
8. Unopposed motions & Chamber applications and review applications in taxation.	One fee ..	50	
9. Attending taxation or hearing judgement.	One fee ..	30	
10. Attending settlement of Index and for taking other steps for preparation of the record.		150	

*Part II*

	Not exceeding
	Rs.
1. To junior advocate for drafting petitions for special leave and petitions under article 32 of the Constitution inclusive of the affidavits in support of the petition.	120
To the senior for settling petitions for special leave and petitions under article 32 of the Constitution inclusive of the affidavits in support of the petition.	150
2. To junior advocate for drafting other petitions or affidavits (other than formal petitions like petitions for excusing delay and affidavits in them and affidavits of service).	30
To senior advocate for settling other petitions or affidavits (other than formal petitions like petitions for excusing delay and affidavits in them and affidavits of service).	60
3. To junior advocate for drawing statement of case in appeals, pleadings in suit or special case.	300
To senior Advocate for settling statement of case in appeals, pleadings in suit or special case in consultation with junior, if allowed.	450
4. Acting fees:	Rs, 500 but not less than Rs. 250, as the Taxing Officer may in his discretion allow, having regard to the nature & duration of the 'Acting' work involved in the case.
In appeals (defended and undefended) including suits and References under article 143 or article 317 (1) of the Constitution or defended petitions under article 32 of the Constitution.	
In undefended petitions under article 32 of the Constitution.	100
Actual postal and telegraph charges where necessary to be allowed in the discretion of the Taxing Officer.	

*Part III*

	Not exceeding
	Rs.
1. Preparing copies of documents (other than tabulated statements and accounts) whether written or typed, first copy per folio.	25 p.
2. Preparing carbon copies of above, if legible, per folio.	12 p.
3. Preparing copies of tabulated statements and accounts, per folio.	50p.
4. Preparing carbon copies of above per folio.	25p.
5. Preparing lithographed or printed copies per folio for each copy.	31p.
6. Preparing photographed copies.	Actual Charges.
7. Making transcript or copying papers for the press where necessary for preparing paper book, including examination per folio.	62 p.
8 Printing paper book.	Actual cost at a reasonable rate to be allowed by the Taxing Officer
9. Examining proofs, per folio	31p.

**THIRD SCHEDULE**

## Table of Court Fees

**Part I****Original Jurisdiction**

	Rs.
1. Filing and registering plaint	250.00
2. Filing and registering written statement	50.00
3. Filing and registering set-off or counter-claim	50.00
4. Reply to a counter-claim	50.00
5. Examining and comparing documents with the original, for each folio.	0.50
6. Reducing into writing or, where taken down in short hand, transcribing the depositions of witnesses, for each folio.	0.62
7. Typed copies of transcript of depositions of witnesses for any party:-	
first copy, per folio	0.50
carbon copies, per folio	0.12
8. Petitions under article 32 of the Constitution other than petitions for habeas corpus and petitions arising out of criminal proceedings.	50.00

**Part II****Appellate Jurisdiction**

	Rs.
1. Petition for special leave to appeal	250..
2. Lodging and registering petition of appeal:-	
Where the amount or value of the subject matter in dispute is Rs.20000 or below that sum.	250..
For every Rs. 1,000 in excess of Rs. 20,000.	5.00
In cases where it is not possible to estimate at Money value the subject matter in dispute.	For every thousand rupees or part thereof 250.00
Provided:	
(1) that the maximum fee payable in any case shall not exceed Rs. 2,000 and	
(2) that where an appeal is brought by special leave granted by the Court credit shall be given to the appellant for the amount of court-fee paid by him on the petition for special leave to appeal.	
3. Lodging of case, or caveat.	2.00
4. Application for review of judgement or order of Court	The same fee as was paid on the original proceeding.

**Part III**  
**Miscellaneous**

	Rs.
1. Entering in register of suits, appeals or matters, names of representatives of a deceased party or of a substituted or added party.	2.00
2. Summons or notice to defendant or his representative or a respondent to a petition or to a memorandum of appeal, for not more than five persons, (with an additional fee of Re. 1 for every person in excess of five)	5.00
3. Entering appearance	5.00
4. Amending appearance	5.00
5. Vakalatnama	3.00
6. Filing fee for every document for which a fee is not specially provided including documents annexed there to as exhibits if any, or produced with plaint or used in evidence, each document	2.00
7. Every application to the court not specially provided for	10.00
	Rs.
8. Every application to the Court by notice of motion where an ad interim <i>ex parte</i> order is prayed for.	20.00
9. Every application to a Judge in Chambers, the Registrar or Taxing Officer not specially provided for	5.00
10. Every requisition to draw up an order, including fee for filing the order.	5.00
11. Warrant, writ, summons or other process not specially provided for, for not more than five persons (with an additional fee of Re.1 for every person in excess of five).	5.00
12. Every certificate or report of a Judge in Chambers or of Registrar on an investigation.	10.00
13. Every other certificate for which a fee is not specially provided.	3.00
14. Commission to examine witnesses or other commission	10.00
15. Production by an officer of the Court in any other court or before a Commissioner of records of any suit, matter or appeal, exclusive of travelling expenses.	10.000
16. For production of records by post, exclusive of postage, registration and insurance fees.	5.00
17. For every attendance on parties or their advocates inspecting books and papers in Court.	5.00
18. For enquiry into sufficiency of security	8.00
19. For every search or examination of records	3.00
20. Every affidavit affirmed or Sworn	2.00

21. For every oath or affirmation administered to witness	3.00
22. Every exemplification of decree or other document in addition to the folio and other charges	10.00
23. Every requisition for duplicate or other copy of any document.	1.00
24. For duplicate and other copies of any document, per folio less requisition fee paid	6.2
25. For amending pleadings or other proceedings under order of the Court, per folio	2.00
26. Upon all moneys or securities paid to the Registrar or deposited with him.	A commission of 1 per cent and 2-1/2 per cent on interest drawn on invested money.
27. Every requisition for translation	1.00
28. Every written translation, per folio, less requisition fee paid	2.00
29. Checking and certifying a translation made by a translator other than an officer of the Court, per folio.	1.00
30. Summons by Taxing Officer	3.00
31. Summons by Taxing Officer	2.00
32. Taxing each bill, not exceeding 10 folios	10.00
33. For every other folio	1.00
34. Registering every bill of costs	1.00
35. Special certificate of allowance where required	8.00
36. Certificate on review of taxation	10.00
37. For every certificate of funds in Court	8.00
38. Requisition to prepare an estimate of the charges for preparation of record.	10.00
39. Preparing copies, making transcript or keeping papers for the press for preparing paper book including examination thereof, to be deposited in cash initially and thereafter to be converted into court fees.	.50 per page
40. Examining proofs from the press	.25 per page
41. Cyclostyling record :	
For 20 copies or less	2.50 per page
For every additional 5 copies or less	.50 per page
42. Printing the record	Actual charges to be ascertained according to the prevailing rates. (to be deposited in cash)

43. Preparing photograph copies of maps	Actual charges to be deposited in cash.
44 Certificate of the record	.25 per page or part thereof to be deposited in cash and there-after to be converted in to Court fees
45. Registering a clerk of an advocate or a firm of advocates	5.00
46. Requisition for issue of an identity card in substitution of one that is lost or damaged.	3.00

N.B. – In the case references under article 142 of the Constitution such of the above fees as may be appropriate shall be charged.

**Fourth Scheduled**  
***Fees to Officer of Court***

	Rs.
1. Fees of interpreter for explaining at the house of a party or any place other than the Court House, pleadings and other documents except affidavits or affirmations where not exceeding 20 folios.	8.00
Where over 20 folios, for every 10 folios or part thereof.	2.50
2. Fees of Registrar for taking bonds and of commissioners for taking affidavits or affirmations at the house of a party or any place other than the Court House.	
For the first affidavit, oath or affirmation or bond, where within the limits of the Union territory of Delhi.	16.00
For the first affidavit, oath or affirmation or bond, where beyond such limits.	24.00
For every affidavit, oath or affirmation or bond taken at the same time and place after the first, in the same suit, appeal or matter.	8.00
3. Fees of commissioners, for receiving affidavit, oaths or affirmations at the Court House, for every affidavit, oath or affirmation.	2.00
4. Fees of interpreter for explaining bonds, affidavits, or petitions, at the house of a party or any place other than the Court House.	Half the fees allowed to Registrar or Commissioner.

**FIFTH SCHEDULE**  
**FORMS**  
**No. 1**  
(S. C. R. Order IV - Rule 12)

**In the Supreme Court of India**

Application for the registration of a clerk.

1. Name of advocate/firm of advocates on whose behalf the clerk is to be registered:

2. Particulars of the clerk to be registered:

(i) Full name (In capitals):

(ii) Father's name:

(iii) Age and date of birth:

(iv) Place of birth and nationality:

(v) Educational qualifications:

(vi) Particulars of previous employment, if any.

I, \_\_\_\_\_ (clerk above-named), do hereby affirm that the particulars relating to me given above are true.

\_\_\_\_\_  
(Signature of Clerk)

3. Whether the advocate/firm of advocates has a clerk already registered in his/it employ, and whether the clerk sought to be registered is in lieu of or in addition to the clerk already registered.

4. Whether the clerk sought to be registered is already registered as a clerk of any other advocate and if so, the name of such other advocate.

I, \_\_\_\_\_ (advocate) certify that the particulars given above are true to the best of my information and belief and that I am not of any facts which would render undesirable the registration of the said \_\_\_\_\_ (name) as clerk.

Dated: \_\_\_\_\_

(Signature of advocate/partner of firm of advocates).

To

The Registrar,

Supreme Court

**No. 2**  
**Form of Summons for an Order in Chambers**  
(S. C. R., Order VI)  
In the Supreme Court of India

Appellate Jurisdiction]  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

Let all parties concerned attend before \_\_\_\_\_ in Chambers at the Court House (New Delhi) on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon on the hearing of an application on the part of the above-named plaintiff (or appellant, defendant, respondent as the case may be) for an order that (here state the precise object of the application).

Dated this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Take notice that this summons will be attended by counsel for the applicant.)

(Signed)\_\_\_\_\_

Advocate on record for the plaintiff.

This summons was taken out by \_\_\_\_\_ advocate, on record for the plaintiff.

To \_\_\_\_\_

Advocate on record for the defendant.

**No. 3**  
**Notice of Appeal from Registrar**  
(S. C. R., Order VI rule 3)  
In the Supreme Court of India

Appellate Jurisdiction]  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]



Take notice that the above-named plaintiff (or appellant, respondent, defendant as the case may be) intends to appeal against the decision of the Registrar, given on the \_\_\_\_\_ day of \_\_\_\_\_ (ordering or refusing to order) that

And further take notice that you are required to attend before the Judge in Chambers at the Court House (New Delhi) on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ 'o' clock in the forenoon, on the hearing of an application by the said plaintiff (or appellant, respondent, defendant as the case may be) for an order that (here state the order sought to be obtained).

(Signed)\_\_\_\_\_

Advocate on record for the plaintiff.

To \_\_\_\_\_

Advocate on record for the defendant.

-----  
**No. 4**

**Notice of Motion**

(S. C. R., Order VIII rule 2)

In the Supreme Court of India

Appellate Jurisdiction]

Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]

[State of A. B.]

[Appellant]

[Plaintiff]

Vs.

[C. D.]

[State of C. D.]

[Respondent]

[Defendant]

Take notice that the Court will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, or so soon thereafter as counsel can be heard, by Mr. \_\_\_\_\_, counsel for the above-named \_\_\_\_\_ plaintiff or defendant, appellant respondent as the case may be, that (or for an order that, or for) (here state the precise object of the motion, as thus: this action may stand dismissed for want of prosecution).

Dated this..... day of..... 20.....

(Signed)\_\_\_\_\_

Advocate on record for the plaintiff.

To \_\_\_\_\_

Advocate on record for the defendant.

**No. 5**  
**Form of Oath by Translator**  
(S. C. R., Order X, rule 4)  
In the Supreme Court of India

In the matter of....., a translator.

I, ..... solemnly affirm and say that I will translate correctly and accurately all documents given to me for translation.

Dated this, the..... day of.....

Before me.

Registrar.

\_\_\_\_\_

**No. 6**  
**Application for Production of Record**  
(S. C. R., Order XII, rule 1)  
In the Supreme Court of India

Appellate Jurisdiction]  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

To  
The Registrar,  
Supreme Court of India.

Sir.  
Please produce the records of the within \_\_\_\_\_ mentioned case before  
No. (here insert the number and title of the case of which the records are required).

Dated this the..... day of..... 20.....

(Signed)\_\_\_\_\_

No. 7

Notice to the respondent of lodgement of petition of appeal  
(S. C. R. Order XV rule 11)

-----

In the Supreme Court of India  
Civil Appellate Jurisdiction  
Civil Appeal No..... of 20.....

Appeal from the judgement and decree/order of the High Court of Judicature  
at..... (full particulars to be given.....)

[A.B.]

[Appellant]

Vs.

[C. D.]

[Respondent]

To

C.D.

Through Shri.....

Advocate-on-record,

Supreme Court of India.

New Delhi.

OR

(Give the address of the respondent if no appearance of an advocate-on-record has been entered)

TAKE NOTICE that the Appellant above-named has on..... filed in the Registry of the Supreme Court a petition of appeal (copy enclosed) from the judgement and decree/order of the High Court of Judicature at..... and the said petition has been registered in the Supreme Court as Civil Appeal No..... of 20....., and that as required by rule 6 of Order XV of the Supreme Court Rules, 1966, the appellant has deposited with the Registrar of the Court requisite security for the cost of the respondent.

Notice is hereby given to you that if you wish to contest the appeal you may appear within thirty days of the receipt of this notices before this Court either personally or by an advocate-on-record of the Court appointed by you in that behalf, and take such part in the proceeding as you may be advised.

Take further notice that in default of your appearance within the time prescribed the appeal will be proceeded with and determined in your absence and no further notice in relation thereto shall be given to you.

Dated this..... day of ..... 20.....

ASSISTANT REGISTRAR

Address for service on the Appellant:

(If the appeal has been filed through an advocate-on-record, the address of the advocate-on-record should be given)

OR

If the party is appearing in person then a local address should be given).

NOTE –

Where the record of the appeal is required to be prepared under the supervision of the Registrar of the Court, appealed from, the notice shall also state this fact and shall, in relation to the preparation of the record, also require the respondent to take steps before the Court appealed from (*vide* rule 14 or Order XV, of the Supreme Court Rule, 1966).

-----

**No. 8**

Memorandum of Appearance in Person  
(S.C.R. Order XV, rule 12)

In the Supreme court of India  
(Appellate Jurisdiction)

Appeal No..... of 20.....

[A.B.]

[Appellant]

Vs.

[C. D.]

[Respondent]

To

The Registrar,

Please enter an appearance for the respondent above-named in this appeal.

Dated this ..... day of.....20.....

(Signed)-----

Address of Service

-----

**No. 9**

Memorandum or Appearance through Advocate-on-record  
(S.C.R., order XV, rule 12)

In the Supreme Court of India

Appellate Jurisdiction]

Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

To

The Registrar,

Please enter an appearance for the above-named Respondent (or the defendant) in this appeal/case.

Dated this ..... day of.....20.....

(Signed)-----  
Advocate on record for the Respondent.

**No. 10**

Notice to Respondent of Lodging of Appeal  
(S.C.R., order XXI, rule 15)  
In the Supreme Court of India

[Appellate jurisdiction]

Criminal Appeal No..... of 20.....

Appeal from the judgment (order, sentence or decision) of the High Court of  
judicature/Court of Tribunal at.....

[A.B.]

[Appellate]

Vs.

[The State]

[Respondent]

To

The Attorney General for India and or The Advocate General concerned.

Take notice that an appeal from the judgment (order, sentence or decision) of the  
High Court of Judicature at ..... dated the..... 20.....,  
in Case..... No..... (here give number of case in High Court, or Judicial  
Commissioner’s Court) was presented by the above-named appellant on the day of.....  
20....., and has been registered in this Court as Criminal Appeal No.....  
of 20.....

Dated this the..... day of..... 20.....,

Registrar

**No. 11**  
**Summons for disposal of Suit**  
(S.C.R., order XXIV, rule 1)  
In the Supreme Court of India  
(Original Jurisdiction).

Case No..... of 20.....,

[State of A.B.]

[Plaintiff]

Vs.

[State of C.D.]

[Defendant]

To

Whereas the above-named plaintiff has instituted a suit in his Court against you claiming..... you are hereby required to cause an appearance to be entered for you in the Registry of the Court within twenty-eight days from the service upon you of this summons, exclusive of the day of such service; and you are summoned to appear before this Court by an advocate-on-record of the Court to answer the plaintiff's claim on the day the case is set down for hearing upon which date you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case.

And you are hereby required to take notice that in default of your causing an appearance to be so entered, the suit will be liable to be heard and determined in your absence.

Witness                      Chief justice of India, \*the..... day of..... 20.....,

Advocate on record

\*At the Supreme Court, new Delhi.

Address:

Registrar.

-----

**No. 12**

Notice of appearance  
(S.C.R., Order XXIV, rule 7)  
In the Supreme Court of India  
(Original Jurisdiction)

Case No..... of 20.....

[State of A.B.]

[Plaintiff]

Vs.

[State of C.D.]

[Defendant]

To  
(The plaintiff or his Advocate on record).

Take notice that appearance has been entered for the above-named defendant in this case.

Dated this the..... day of.....20.....

(Signed)-----  
Advocate on record for the defendant

-----

**No. 13**

Summons for Directions

(S.C.R., Order XXIV, rule 8)

In the Supreme Court of India

(Original Jurisdiction)

Case No..... of 20.....

[State of A.B.]

[Plaintiff]

Vs.

[State of C.D.]

[Defendant]

Let all parties concerned attend..... in Chambers at Court House (New Delhi) on the day of..... 20....., at..... o'clock in the forenoon on the hearing of an application by the plaintiff for directions in this action as follows:-[The applicant should specifically state what he applies for, and strike out what he does not apply for.]

Pleading	..	..	..	[Here state the directions required, as thus
Particulars	..	..	..	
Admission of documents and facts			..	
Discovery	..	..	..	That the Plaintiff may be at liberty to amend his statement of claim by (state amendments proposed). He may be advised.]
Interrogatories		..	..	
Inspection and production of Documents	..	..	..	
Inspection of real or personal Property	..	..	..	
Commissions	..	..	..	
Examination of witnesses		..	..	
Place of trial		..	..	
Mode of trial		..	..	

Dated this the ..... day of ..... 20.....

Registrar

This summons was taken out by..... Advocate-on-record for the plaintiff.

To \_\_\_\_\_,

Advocate on record for the defendant.

**No. 14**

Notice of payment of money into Court

(S.C.R., Order XXXIII, rule 1)

In the Supreme Court of India

(Original Jurisdiction)

Case No..... of 20.....

[State of A.B.]

[Plaintiff]

Vs.

[State of C.D.]

[Defendant]

Take notice that the defendant has paid into Court Rs..... and says that (Rs..... part of) that sum is enough to satisfy the plaintiff's claim (for .....and Rs..... the other part of that sum is enough to satisfy the plaintiff's claim for.....) and admits (but denies) liability there for.

Dated this the.....day of..... 20.....,

(Signed)-----

Advocate on record for the defendant

Address

To

.....  
Advocate on record for plaintiff,  
Address.

-----

**No. 15****Acceptance of sum paid into Court**

(S.C.R., Order XXXIII, rule 1)

In the Supreme Court of India

(Original Jurisdiction)

Case No.....of 20.....

[State of A.B.]

[Plaintiff]

Vs.

[State of C.D.]

[Defendant]

The plaintiff accept the sum of Rs..... paid by the defendant into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in this action).

Dated this the.....day of..... 20.....,



(Signed)-----  
Advocate on record for the plaintiff  
Address

To  
.....  
Advocate on record for the defendant,  
Address.

-----

**No.16**

Notice to the Attorney General for India of reference under article 143 of the Constitution of India.

(S.C.R., Order XXXVII)

In the Supreme Court of India

REFERENCE No..... OF 20.....

In the matter of a reference under article 143 of the Constitution of India

To  
The Attorney General for India

Whereas under article 143 of the Constitution of India, the president has referred the following questions (s) of law (or fact) for consideration and report to this Court:-

(Here set out the question or questions referred.),

Take notice that you are hereby required to appear before this Court..... on the day of..... 20....., at..... O'clock in the forenoon to take the directions of the Court in the matter.

Witness , Chief Justice of India, the..... day of..... 20.....

Registrar.

-----

**No. 17**

**Notice to parties of reference under article 143 of the Constitution of India.**

(S.C.R., Order XXXVII)

In the Supreme Court of India

REFERENCE No..... OF 20.....

In the matter of (here state the subject matter under reference)

AND

In the matter of a reference under article 143 of the Constitution of India

To  
(Names of parties)

Whereas under article 143 of the Constitution of India, the President has referred the following questions(s) of law (or fact) for consideration and report to this Court:-

(Here set out the question or questions referred.)

Take notice that you are hereby required if you desire to be heard to cause an appearance to be entered for you in the Registry of this Court on or before the..... day .....of 20....., and to attend on the said day at ..... O'clock in the forenoon before the Court by an advocate of the Court to take the directions of the Court with respect to statements of facts and arguments and with respect to the date of the hearing.

Witness , chief Justice of India, the..... day of.....  
20.....,

Registrar

-----

**No. 18**

**Summons to attend Taxation**

(S.C.R., Order XLII, rule 11)

In the Supreme Court of India

Appellate Jurisdiction]  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

Bill No..... of 20..... (Here state the names of the parties to the bill)

Whereas Mr. E.F., advocate on record for the appellant (or as the case may be) has lodged a bill of costs (copy appended hereto) for taxation as between [party and party and also as between] advocate on record and client, notice is hereby given that the Taxing Officer of the Court will proceed to tax the said bill on the.....day of..... 20....., at..... o'clock in the forenoon (afternoon)when you may attend the Taxing officer in his Chambers at the Court House and contest the said bill or any items therein.

Dated this the..... day of..... 20.....,

Taxing officer

**No. 19****Affidavit of service of Summons**

(S.C.R., Order XLII, rule 14)

In the Supreme Court of India

Appellate Jurisdiction]  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
 [State of A. B.]

[Appellant]  
 [Plaintiff]

Vs.

[C. D.]  
 [State of C. D.]

[Respondent]  
 [Defendant]

I, ..... of ..... Advocate on record for the above named ....., make oath/solemnly affirm and say as follows:-

I, did on the..... day of..... 20....., serve Mr..... Advocate-on-record for the above named..... in this action (or appeal) with a true copy of the summons now produced and shown to me marked A, by leaving it, before of four in the afternoon at the [office or dwelling house] of the said..... situate..... being the address for service in this action [or appeal] [with his clerk or his servant or as may be there] or by post-envelope addressed to the said..... at....., being the address for service in this action[or appeal].

Sworn at..... this..... day of.....20....., Before me.

This affidavit is fixed on behalf of the

-----

**No. 20****Affidavit of service by post**

(S.C.R., Order XLII, rule 14)

In the Supreme Court of India

Appellate Jurisdiction]  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

I, ....., advocate on record for the above-named.....  
make oath/solemnly affirm and say as follows:-

I did serve the advocate on record for the above-named..... in this  
action [or appeal] [or the above-named..... if he has appeared in  
person] with the summons (or notice or other documents) now produced and shown to me  
marked A, by posting it on the..... day of..... 20....., at (name of post  
office) a true copy of the said summons [or as may be] in a prepaid envelope registered for  
acknowledgement addressed to the said advocate on record [or respondent or as may be]  
at....., which is his address for service.

The postal acknowledgement is attached hereto.

Sworn at..... this..... day of..... 20..... Before me.

This affidavit is filed on behalf of the

-----

**No. 21**

**Certificate of Taxation**

(S.C.R., Order XLII)

In the Supreme Court of India

Appellate Jurisdiction  
Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

Bill No..... of 20..... (Here state the names of the parties to the bill)

I do hereby certify that I have taxed the above bill of costs, lodged in this Court by Mr. E.F., advocate on record for appellant [or as the case may be] and do allow, as between party and party the sum of [amount in figures and words.]

Dated this the..... day of..... 20.....

Taxing officer

-----  
**No. 22**

**Notice of proceedings to Attorney General for India of Advocate-General of a State**

(S.C.R., Order XLII, rule 1)

In the Supreme Court of India

[Appellate Jurisdiction]

[Original Jurisdiction]

Appeal/Case No..... of 20.....

[A. B.]  
[State of A. B.]

[Appellant]  
[Plaintiff]

Vs.

[C. D.]  
[State of C. D.]

[Respondent]  
[Defendant]

To

The Attorney General for India      OR      Advocate General of a State

Take notices that the above-named appeal/case has been filed in this Court [and is fixed for hearing on the..... day of..... 20....., and shall be taken up for hearing by the Court on that day, at..... O'clock in the forenoon, or so soon thereafter as may be convenient to the Court [and shall be fixed for hearing on a suitable date of which due notice will be given to you.]

As the appeal/case raises [an] important question(s) [here state briefly the question(s) involved] notice is hereby given to you so that you may appear and take such part in the proceedings before this Court as you may be advised.

Dated this..... day of..... 20.....

Registrar

**No. 23****Writ of Commission**

(S.C.R., Order XLVI)

In the Supreme Court of India

Original Jurisdiction

[State of A. B.][Appellant]

Vs.

[State of C. D.][Defendant]

To

The Commissioner appointed to examine the under mentioned witnesses on behalf of.....

I, ....., hereby appoint you and give you full power and authority to swear or affirm and diligently to examine on..... interrogatories and *viva voce*..... as shall be produced before you as..... witness (es) ..... on behalf of the said..... in a certain Case No..... of..... now pending in the Supreme Court (wherein) and I further command you that you do at certain days and places to be appointed by you for that purpose of which reasonable notice shall be given to all parties cause the said witness (es) to come before you and there examine and cross examine such witness (es) either upon oath or solemn affirmation which we hereby give you full power and authority to administer to such witness in the form firstly specified at the foot hereof, and that you do take such examination and reduce the same into writing on paper ; and when you shall have so taken the same you are to send the same before the [returnable date as given in the order for the issue of this commission] to the Registrar of the said Supreme Court closed up under your Seal together with such documents as shall be spoken to and marked exhibits and this writ.

And I further empower you to appoint if necessary, a competent interpreter to interpret such of the proceedings under this commission as you may deem necessary to have interpreted from or into the English Language. And I further command you that the interpreter employed in interpreting the depositions of the said witness (es) to be examined by virtue of this writ shall, before he be permitted to act as such interpreter as aforesaid, take the oath or affirmation lastly specified at the foot hereof which I hereby give you power and authority to administer to such interpreter. And I do lastly order that the parties to this suit do appear before you in person or by their pleaders.

Witness..... Chief Justice of India, at the Supreme Court, New Delhi,  
the..... day of..... 20.....

Advocate on record for

Advocate on record for

[Name of witnesses to be examined]

Registrar

NOTE 1 - The Commissioner shall not be bound to execute this commission unless such a sum as he thinks reasonable be deposited with him for the expenses of executing the same and the also of summoning the witnesses and defraying their travelling and other expenses.

NOTE 2 - After the deposition of any witness has been taken down, and before it is signed by him, it shall be distinctly read over, and, where necessary, translated to the witness in order that mistakes or omissions may be rectified or supplied. The deposition shall be signed by the witness and left with Commissioner who shall subscribe his name and date of the examination.

Form of the oath or affirmation to be administered to the witness.

I swear in the presence of Almighty God [or solemnly affirm] that the evidence which i shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

So help me God

Form of the oath or affirmation to be administered to the interpreter.

I swear in the presence of Almighty God [or solemnly affirm], that I understand and speak the..... and English Languages, and that I will well and truly and faithfully interpret, translate and explain to the witness to be produced before the Commissioner may require me to interpret and explain.

So help me God

N.B. The words “so help me God” are to be omitted when an affirmation is administered.

The execution of this commission appears by the Schedule hereunto annexed.

-----

**No. 24**

***Form of Lodgment Schedule***

In the Supreme Court of India

Suit/Appeal/petition No..... of.....

..... Plaintiff(s)/Appellant(s)/Petitioner(s)

*Versus*

.....Defendant(s)/Respondents(s)

Date of order	Amount	Party on whose behalf and the purpose for which the payment is made.	Remarks
---------------	--------	--	---------

Dated.....

Issue Chalan

Time for payment till.....

.....  
 (Signature)  
 Advocate for party making the payment

.....  
 (Signature)  
 Registrar

**No. 25**

***Deposit Repayment Order and Voucher***

**(Vide T.R. Form 61)**

To  
 The New Delhi Sub-Treasury

---

Name of Account..... Voucher No.....

---

Original Number..... Name of Depositor.....

Date of Receipt.....

Amount originally Deposited.....

Examined and entered

Received this..... day.....

Date.....

20..... the sum of Rs.....

Accountant, Treasury.

being the amount payable out of the said

Pay Rs.....

deposit as per order of the Supreme Court,

dated.....made in .....

of 20.....

Treasury Officer

Claimant's Signature

Date.....

Passed for payment to .....

.....for Rs.....

Date.....

As per Order of the Supreme Court

dated.....

in C.M.P. No.....of 20.....

Registrar

Supreme Court of India, New Delhi

-----



**No. 26*****Form of Bank Guarantee***

In the matter of :

CIVIL APPEAL/PETITION/ C.M.P..... (here give the number of Cause/matter/appeal)

And

In the matter of:

..... (Give the name of the parties)

Whereas.....(here give the name of the party obtaining the order).....(above-named) has filed an Appeal in the Supreme Court against the Judgment and decree/order of the .....(here describe the Court and the number of the cause).....

And whereas on a motion made for the purpose on the..... (here give the date) the Supreme Court of India has in the aforesaid proceedings been pleased in order *inter alia* as follows:

(Here quote the relevant terms of the order).....

And whereas (here give the name of the Party concerned)..... the respondent (or appellant, as the case may be)..... has requested us..... (here give the name of the Bank) having its registered office at..... (here give the registered address of the place of business of the Bank) to guarantee the due payment of the said sum of Rs..... (here give the amount) by the said..... (here give the name of the party) in event of the Supreme Court allowing/modifying/dismissing the said appeal and setting aside the decree or such other lesser amount as the Court may order. We ..... (here give the name of the Bank)are hereby held and firmly bound unto the Supreme Court of India through the Registrar of the said Court for the payment to it or to the ..... (here give the name of the party concerned)..... on demand and without demur of the said sum..... (here give the amount) or such other lesser amount as may be ordered by the Supreme Court and require to be paid or refunded by the..... (here give the name of the party concerned) to the..... (here give the name of the party to whom the amount is to be paid) as a result of the final disposal of the said..... (here indicate the appeal, cause or matter) and the

guarantee herein contained shall not be affected by any change in the constitution of the Bank and it is HEREBY agreed by the between the parties that this guarantee shall remain in full force and virtue till the disposal of the..... (here give the number of the case, appeal, cause or matter) to which the aforesaid order of the Court relates and until an order of the Supreme Court is made discharging this guarantee.

IN WITNESS WHEREOF we the.....(here give the name of the Bank) has executed this.

This the..... day of..... 20.....,

Signed

Witness:

For the..... (here give the name of the Agent of the Bank).

[No. F.10/65/S.C.M.J.(II)]

By order of the Court

GURU DATTA

Deputy Registrar

-----

## **APPENDIX F**

### **Ministry of Law**

### **NOTIFICATION**

*New Delhi, the 14th January 1954*

S.R.O. 233 – The following order made by the president is published for general information-

### **C.O. 47**

#### **The Supreme Court (Decrees and Orders) Enforcement order, 1954**

In exercise of the powers conferred by clause (1) of Article 142 of the Constitution of India and of all other powers enabling him in that behalf, and in supersession of the Supreme Court (Decrees and orders) Enforcement Order, 1960, the President is pleased to make the following Order, namely:-

1. (1) This Order may be called the Supreme Court (Decrees and Orders) Enforcement Order, 1954.

(2) It shall come into force at once.

2. Notwithstanding anything contained in any other law in force at the commencement of this Order, any decree passed or order made by the Supreme Court, whether before or after

such commencement, including any order as to the costs of, and incidental to, any proceedings in that Court, shall be enforceable:-

(a) Where such decree or order was passed or made in exercise of its appellate jurisdiction, in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred; and

(b) in any other case, in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of such Court, Tribunal or other authority as the Supreme Court may specify in its decree or order or in a subsequent order made by it on the application of any party to the proceeding.

RAJENDRA PRASAD

PRESIDENT

K.V.K. SUNDARAM

*Secretary to the Government of India*

## APPENDIX G

### RULES RELATING TO PROFESSIONAL CONDUCT OF ADVOCATES

1. An Advocate is bound to accept any brief in the Court in which he professes to practice at a proper professional fee, according to the length and difficulty of the case, unless there are special circumstances which, *inter alia*, would include personal relationship want of time, ill-health, the fact that the client has already retained another lawyer, a belief that in the special circumstances, the case is one which ought not to be advocated in Court, to justify his refusal.

2. A social engagement does not, except in vary exceptional circumstances, justify an advocate in returning a brief at short notice.

The papers in a brief delivered to Advocate are the property of the client and Advocates have no right to lend them to any person without the consent of the client.

3. It is not in accordance with professional etiquette for one Advocate to hand over his brief to another represent his in Court and conduct the case as the latter Advocate and himself been briefed unless the client consents to this courts being taken.

4. An advocate should not take instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or is a pleader or Vakil employed by such party for the case, or some servant, relative or friend believed by the Advocate to be authorized by the party to give such instructions.

5. There are certain occasions when an Advocate must decline to accept instructions because of special circumstances which would render it difficult for him to maintain his professional independence, or would make acceptance incompatible with the best interests of the administration of justice.

6. It is inadvisable to lay down what an Advocate defending a client on a charge of crime may legitimately do in the course of his defence, but he is not entitled to attribute to another person the crime with which his client is charged want only or recklessly, nor unless the facts or circumstances given in evidence, or rational inferences drawn from them, raise at least a not unreasonable suspicion that the crime may have been committed by the person to whom the guilt is imputed.

7. Advocate for the prosecution should state all the relevant facts of the case dispassionately; whether they tell in favour of a severe sentence or otherwise; but he should not attempt by advocacy to influence the court towards a more severe sentence. It is, however, a common and proper practice especially in the case of an unrepresented offender, for the prosecutor to draw the attention of the court to any mitigating circumstances as to which he is instructed.

8. Advocates should avoid taking frivolous objections in their pleadings or in the course of a trial to the admissibility of evidence.

9. Writing intimidating letters to any Court or libellous articles against a Court is unprofessional.

10. According to the best traditions of the profession, an Advocate should (whilst acting with all due courtesy to the tribunal before which he is appearing) fearlessly uphold the interest of his client without regard to any unpleasant consequences either to himself or to any other person.

11. An Advocate who has drawn up pleading, advised or accepted a brief during the progress of an action on behalf of any party, shall not accept a retainer or brief from any other party without giving the party, for whom he has drawn up pleadings or advised or on whose behalf he has accepted the brief, an opportunity of retaining or delivering a brief to him.

12. An Advocate proposing to file a vakalatanama or an appearance in a suit, appeal or other proceedings, in which there is already an Advocate on record, may not do so unless such Advocate is dead or has retired from the case or unless a written consent of such Advocate is produced, which consent will not be refused when all his dues according to the written terms of his engagement signed by the client or his duly authorized agent, or in the absence of agreed terms in writing as aforesaid the fees according to the scale fixed by the court have been paid to him, or when the consent of such Advocate is refused unless he obtained the permission of the Registrar.

13. Advocates should keep regular accounts of client's money entrusted to them and the account should show the amounts received from the client or on his behalf, the expenses

incurred for him and the debits made on account of fees with respective dates and other particulars, if any.

14. Where moneys are received from or on account of a client the entries in the account shall contain a reference as to whether the amounts have been received for fees or out fees, and during the course of the proceedings no Advocates shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the out fees towards fees.

15. Misappropriation of the clients' money entrusted to an Advocate is a gross professional misconduct.

16. Where any amount is received from Court or from other parties on behalf of the client, the fact of such receipt must be intimated to the client as early as possible.

17. Advocates should not enter into arrangements with their clients by which the clients' money in their hands are converted into loans.

18. No Advocate shall lend money to his client for the purpose of any action or legal proceeding in which he is engaged by such client.

*Explanation* – No Advocate shall be held guilty of a breach of the rule, if, in the course of a pending suit or proceeding and without any arrangement with the client in respect of the same, the Advocate feels compelled, by reason of any unanticipated emergency, or by reason of the rules of the Court, to make a payment to the Court on account of the client for the progress of the suit or proceeding.

19. Taking fees from an Advocate in a case where the Advocate is in fact a party is grossly improper conduct.

20. Where a senior and junior are engaged in a case for the same purpose, it is the duty of both to see that both are paid and in case either is not paid, the other would be justified in refusing to work.

21. No Advocate shall be a promoter of a trading company, nor shall be without the leave of the Bar Council otherwise engage in any trade or calling.

An Advocate may, however, be a director of a Company with or without an ordinary sitting fee but no Advocate may, without the leave of the bar Council, be a Managing Director, or a Secretary or even a Director in receipt of remuneration other than the sitting fee.

22. No Advocate while practicing shall engage shall engage in trade or business or accept an appointment carrying a salary without previously obtaining the permission of the Bar Council and High Court. The letter asking for permission should be addressed to the Registrar of the High Court through the Secretary of the Bar Council.

23. No Advocate shall either directly or indirectly bid for or purpose either in his own name or in any other name for his own benefit or for the benefit of any other person any

property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in anyway professionally engaged.

This prohibition does not prevent an Advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the Advocate is expressly authorized in writing in this behalf.

24. No Advocate shall stand as surety for his client while he is appearing for him in that case except with the permission of the Court.

25. An Advocate who is a magistrate should not practice in any of the magisterial Courts of the district in which he exercises such powers.

26. It is undesirable for an Advocate to appear in a Court in which his father or other near relative is the sole Judge.

27. An Advocate who is suffering from leprosy or any other dangerous malady of a contagious nature should discontinue practice as long as the malady lasts.

-----

## **APPENDIX H**

### **Form No. 1 (criminal)**

#### **RULE 67, CHAPTER XV**

#### **FORM OF PRODUCTION WARRANT**

(Under section 491 of the Code of Criminal procedure)

IN THE HIGH COURT OF JUDICATURE, ORISSA

CRIMINAL-JURISDICTION

To

The Officer-in-charge of (Name of Jail or other place, where the person is detained in custody) or to (Name of person)

You are hereby required to have the body of B.C now a prisoner in your custody (or now in your custody) before the High Court on the..... day of..... next, ..... by ..... of the clock in the forenoon of the same day to be dealt with according to law and you shall then and there abide by such order as shall in that behalf be made by the said Court (if the prisoner is detained in public custody), and unless the said B.C. shall then and there, by the said Court, be ordered to be released, you shall, after the said Court shall have dispensed with his further attendance, cause him to be conveyed, under safe and sure conduct, back to the said (jail or other place of custody).

Dated this.....day of.....20.....,

Deputy Registrar

**Form No. 2 (criminal)**

## RULE 67, CHAPTER XV

**FORM OF PRODUCTION WARRANT**

(Under section 491 of the Code of Criminal procedure)

IN THE HIGH COURT OF JUDICATURE, ORISSA

CRIMINAL JURISDICTION

To

The Officer-in-charge of the (Name of Jail)

You are hereby required to have the body of B.C. now a prisoner in the (name of jail), under safe and sure conduct before the High Court on the.....day of..... next, by..... of the clock in the forenoon of the same day, to give testimony in (particulars of the case) now pending before the said Court against D.E. and after the said B.C. shall then and there have dispenses with his further attendance, cause him to be conveyed, under safe and sure conduct, back to the said (name of jail).

Dated this..... day of..... 20.....,

Deputy Registrar

-----

**Form No. 3 (criminal)**

## RULE 67, CHAPTER XV

**FORM OF PRODUCTION WARRANT**

(Under section 491 of the Code of Criminal procedure)

IN THE HIGH COURT OF JUDICATURE, ORISSA

CRIMINAL-JURISDICTION

To

The Officer-in-charge of the (Name of Jail)

You are hereby required to have the body of B.C. now a prisoner in the (name of jail), under safe and sure conduct, before the officers assembled at a Court Martial (or before the Commissioners) at..... on the..... day of..... next, by..... of the clock, in the forenoon of the same day, for the trial of the said B.C.(or there to give testimony in a certain trial now pending before the said Court Martial, or the said Commissioners against D.E. or as the case may be), after the trial of the said B.C. or after the said B.C. shall then and there have given his testimony before the said Court-martial (or the

said Commissioners), or the said Court-martial (or the said Commissioners) shall have dispensed with his further attendance, cause him to be conveyed, under safe and sure conduct, back to the said (name of jail).

Dated this..... day of..... 20.....,

Deputy Registrar

-----

**Form No. 4 (criminal)**

**RULE 67, CHAPTER XV**

**FORM OF PRODUCTION WARRANT**

(Under section 491 of the Code of Criminal procedure)

IN THE HIGH COURT OF JUDICATURE, ORISSA

CRIMINAL-JURISDICTION

To

The Office-in-charge of the (Name of jail)

You are hereby required..... to cause the body of B.C. now a prisoner in the (name of jail) to be conveyed, under safe and sure conduct, to the jail at..... and on..... or before the .....day of....., made over to the Officer-in-charge of such jail, to be by him there kept in intermediate custody for the purpose of trial before (name of Court) at.....(name of place)

Dated this..... day of..... 20.....,

Deputy Registrar.

-----



**APPENDIX I**  
**APPENDIX F SALEABLE FORMS UNDER RULE 10**  
**CHAPTER XIX**

Space for searching  
fee

Twenty Paise court-fees on  
application

Space for expedition  
fee

Serial No. \_\_\_\_\_

**IN THE HIGH COURT OF ORISSA**

Application for *urgent/ordinary* Copy

Here state  
class of  
cases

e.g. S.A., ..... No. of 20.....  
F.A.

Appellant/ Petitioner

Versus

Respondent/ Opp. Party

Description of document of which  
copy is wanted with date, where  
necessary:-

Application is made by.....  
the undersigned, for copy of the marginally named  
document from the High Court/ Lower Court  
file in the above case  
which *Was disposed of on/is still pending*

Dated..... 20.....

The following stamps and stamped sheets are filed :-

Signature of applicant

OFFICE REPORT

The copy will cover

\_\_\_\_\_ Vernacular  
English

.....stamped Sheets at Twenty-five Paise

Estimate of Costs(Excluding what has been filed)

Rs. P.

Estimated stamps etc., notified On.....

Supplied on.....

Date Assistant..... Court fee

Applicant

Typist's Report stamps

Record Received on.....

Short folios and stamps

Notified on..... Extra stamp for urgency

Copy will be ready

On.....

Total number of folios

Used..... Searching fee in

Copy actually ready

Stamps.....

On.....

Total amount of expedition

fee

Copy delivered on.....

Rs..... Total Rs.....

Number of folios

Returned.....

Date

Superintendent

Date

Typist

Serial No.....

Received an application for copy bearing the above number

Superintendent

Date

20

Estimated stamps and sheets valued at

Rs. P.

Supplied on.....

To attend for copy on.....

Received copy on.....with unused stamps and sheet valued at

Rs. P.

Applicant

---

NOTE- The application will not be considered as complete until stamps and have been supplied in full, which must be done within three days of the date of the estimate. All enquiries and complaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

**IN THE HIGH COURT OF ORISSA***Application for information*

Number and date	Name and residence of applicant	Nature of the information required	Date on which the information is to be ready	Signature of the officer receiving the application	Remarks
1	2	3	4	5	6

NOTE- The person applying for information is to fill up columns I (except the No.), 2 and 3 and present it to be the officer appointed to receive such applications, if the information required cannot be immediately, supplied, will fill up, tear off and return the bottom part of the form to the applicant.

**ORISSA HIGH COURT**

**CHALAN FOR DEPOSIT OF MONEY WITH CASHIER**

(To be filled up by the applicant)

**I.** Number, class and year of the case in which money is to be deposited.....

.....Appellant

**II.** Name of parties

*Versus*

(first names only)

.....Respondent.

**III.** Name of person on whose behalf money is tendered.....

**IV.** Nature of deposit.....

**V.** Amount tendered (in words and figures) .....

**VI.** By whom tendered.....

Signature of Advocate

Cashier's Memo.

Date of deposit.....

No. of deposit.....

Accountant

Cashier

Signature of person  
tendering money

---

(N.B.- Deposit must be made between the hours of 10.30 A.M. and 3P.M. No. deposit will be received by the Cashier after 3 P.M.)

**IN THE HIGH COURT OF ORISSA***Application for refund of deposit*

Case No.....of 20

.....Appellant

*Versus*

.....Respondent

Name of applicant	Name of deposit	Date and number of deposit	Amount claimed		Name of the person to whom payment is to be made(vide Orissa high Court Rules, Chapter XIX)
			Rs.	P.	

Accountant's report

Signature of Applicant or his  
Advocate of both

Accountant

Superintendent's Report

Authentication or Counter-  
signature where necessaryRegistrar's order  
Registrar

Superintendent Passed for

by Repayment order

No.....dated.....20

Accountant

Deputy

Registrar

**IN THE HIGH COURT OF ORISSA**

First Appeal No.....of 20

.....Appellant

*Versus*

.....Respondent

List of papers to be inserted in the paper book on behalf of the  
 ..... in the above named Appeal.

Number on the record	Mark(if any) in the Court below	Description and date of paper	Whether the whole or portion is to be inserted in the paper-book.	Number of words

CUTTACK

Signature of Advocate

Dated

for.....

---

 N.B.- If a portions is to be inserted it shall be marked.

MEMO.

No.	of 20		
Appellant	(a) Appearance	for	
Petitioner	(b) Paper-book	for	

Versus

Respondent

Opposite-party

To

The Deputy Registrar of the High Court of Orissa, Cuttack

.....No..... of 20.....

---

Appellant

Petitioner

---

Versus

---

Respondent

Opposite-party

---

Sir, I HAVE the honour that I have been authorized by.....to appear on behalf of the.....in the above noted case and

(a) the fact may be noted

to request that -----

(b) a copy of the paper-book may be supplied to me

Yours faithfully

Advocate for.....

Cuttack

The .....20

---

NOTE- separate forms to be used for (a) and (b) and the unnecessary clause scored out.



<sup>11</sup>[\*\*\*\*\*]

---

<sup>11</sup> Form of Application for inspection of pending High Court Record deleted vide C.S. No.10 Dtd.08.01.1992

**APPENDIX-J**

*Appendix of Account forms and registers under Rule II, Chapter XIX  
Register of deposits received in the High Court of Orissa*

Date of receipt	No. of each deposit	From whom received	Nature of deposit	Amount of each deposit	Initial of D.R.	Daily total carried to Cash Book	Date	Amount of each repayment	Initial of D.R.	Date
				Rs. P.				Rs. P.		

In the month of.....19

Details of repayment Amount of each repayment		Initial D.R.	Date	Amount of each repayment	Initial D.R.	Date	Amount of each repayment	Initial D.R.	Total repayment	Balance carried to clearance register	Lapsed and credited to Government
Rs.	P.			Rs. P.			Rs. P.		Rs. P.	Rs. P.	Rs. P.

**Register of Receipts of the High Court of Orissa**

*Nature of Receipts to be credited to Government*

Date	Number of entry	Number of cases	Persons from whom received	Fines	Deficit printing cost	Miscellaneous	Sale-proceeds of paper books	Total	Signature of Deputy Registrar
1	2	3	4	5	6	7	8	9	10

*Register of payment orders issued by the High Court of Orissa in the month of*

20

Date	Consecutive No. of payment order	To whom paid	No. and date of item in the Registers of Receipts against which the payment is to be made	Amount to be paid		Initial of Deputy Registrar	Date of payment by collector	Initials of Deputy Registrar	REMARKS
				In cash	By transfer				
1	2	3	4	5	6	7	8	9	10
				Rs. P.	Rs. P.				

NOTE- After the receipts of the Treasury advice for the last day of the month. The monthly totals of this Register should be compared with the monthly totals of the Register of repayment of deposits. The difference, if any, will be due to orders granted, but not cashed and the amount of those which have lapsed should be written off.

(O.H.C-166)

(CAC Form 30)

**SCHEDULE No. 9***Register of Repayment of Deposit at**Treasury of*

Details of original deposit			Date of present repayment	Number of repayment voucher	To whom repaid	Whether paid in cash or by transfer	Amount repaid	Initials of-		Daily total carried to cash book	REMARKS
Date of receipt	Number as per register of receipts	Amount or balance of deposit						Accountant	Treasury or disbursing officer		
1	2	3	4	5	6	7	8	9	10	11	12

N.B.- The same form will serve for the list of repayments submitted each month, a single column "Amount repaid" should be substituted for the two sub-column, 'In cash' and 'By transfer' and the last four columns as well as columns 4 and 6 may be struck out by hand and the heading of the form changed to the list of repayment of ,etc.

(O.H.C-389)

## Ledger of Security deposits-High Court-Appellate side

No.

Name

Date of deposit	Amount deposited in Government Promissory notes		Name of endorser	In cash	Initial of	
	No. and year	Amount			Accountant Registrar	Registrar
		Rs. P.		Rs. P.		

## Interest account on above

Date of payment order	No. of cheque	To whom paid	Particulars of interest order	Initials of Registrar	Signature of Payee

(O.H.C-168)

**GENERAL CASH BOOK, ORISSA HIGH COURT***Receipts*

Date	Nature of receipts	Number of items	Amount				Daily total		Initials of Accountant	REMARKS
			Judicial deposits		Other receipts					
1	2	3	4		5		6		7	8
	Opening balance		Rs.	P.	Rs.	P.	Rs.	P.		
	Judicial Deposits									
	Fines ..									
	Sale of paper books.									
	Sale of forms									
	Cash receipts by									
	Money-order ..									
	Miscellaneous									
	Total ..									

*Cashier**Deputy Registrar*

**GENERAL CASH BOOK, ORISSA HIGH COURT***Disbursements*

Date	Nature of payment	No. of voucher	Judicial deposits	Other disbursements	Daily total	Initials of Accountant	REMARKS
1	2	3	4	5	6	7	8
	Remitted to imperial bank of India:- (1) By paid vouchers (2) By cash .. Contingencies .. Grain Compensation allowance. Establishment pay. Analysis of closing balance. Judicial Deposits, etc. Permanent advance. Establishment pay Grain Compensation allowance. R.T. Receipts and bank draft. Travelling allowance Money-order receipts		Rs. P.	Rs. P.	Rs. P.		
	Total ..			Closing balance			
				Total			

*Cashier**Deputy Registrar*



(O.H.C-391)

**PASS BOOK, ORISSA HIGH COURT***Payments and Remittances from the Court*

Date of payment	Court's number of repayment vouchers	Particulars of payment	Amount		Signature of the Agent, Imperial Bank or T.O.	Date of Receipt	Particulars of Receipts	Head of account under which to be scheduled at Treasury	Amount		Signature of the Treasury officer
			Rs.	P.					Rs.	P.	
		Cash remittance from the Court.			Treasury officer.  Agent		High Court deposit Receipts Sale-proceeds of Paper books. Sale-proceeds of forms. Sale of old stores, etc. Miscellaneous(other items)	Judicial deposits ..  XXI-Administration of justice-Miscellaneous.			
		Total ..						Total ..			

CUTTACK

*The*

20

*Deputy Registrar, Orissa High Court*

(O.H.C-170)

**REGISTER OF SALEABLE FORMS**

Date	Application for copy	Price	Application by counsel	Price	Application for refund	Price	Chalans	Price	Application for information	Price	List	Price	Total value	Signature of Deputy Registrar
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

(O.H.C-392)

**REGISTER OF PAYMENTS MADE IN COURT**

Number of repayment order	Date of order	Amount paid	Date of payment	To whom paid	How identified	Signature of cashier	Signature of receipt

