The Code of Civil Procedure, 1908

Act 5 of 1908. 903 sections. Bare Act with the official footnotes.

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[21st March, 1908.]

An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature: It is hereby enacted as follows:-

PRELIMINARY

Section 1. Short title, commencement and extent

(1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

[1][(3) It extends to the whole of India except-

[2]* * * * *

(b) the State of Nagaland and the tribal areas:

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation.-In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution.

(4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union Territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.]

[1] Subs. by Act 104 of 1976, s. 2, for sub-section (3) (w.e.f. 1-2-1977).

[2] Clause (a) omitted by Act 34 of 2019, s. 95 and the Fifth Sch. (w.e.f. 31-10- 2019).

Section 2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Code" includes rules;

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [1]*** section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made;

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

[2][(5) "foreign Court" means a Court situate outside India and not established or continued by the authority of the Central Government;]

(6) "foreign judgment" means the judgment of a foreign Court;

(7) "Government Pleader" includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader;

[3][(7A) "High Court" in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(7B) "India", except in sections 1, 29, 43, 44, [4][44A,] 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;]

(8) "Judge" means the presiding officer of a Civil Court;

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order;

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made;

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;

(13) "movable property" includes growing crops;

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;

(16) "prescribed" means prescribed by rules;

(17) "public officer" means a person falling under any of the following descriptions, namely:-

(a) every Judge;

(b) every member of [5][an All-India Service];

(c) every commissioned or gazetted officer in the military [6][naval or air] forces of [7][the Union] [8]*** while serving under the Government;

(d) every officer of a court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125;

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds; and

(20) "signed", save in the case of a judgment or decree, includes stamped. [9]* * * * *

[1] The words and figures "section 47 or" omitted by Act 104 of 1976, s. 3. (w.e.f. 1-2-1977).
[2] Subs. by Act 2 of 1951, s. 4, for clause (5) (w.e.f. 1-4-1951).
[3] Ins. by s. 4, ibid. (w.e.f. 1-4-1951).
[4] Ins. by Act 42 of 1953, s. 4 and the Third Sch. (w.e.f. 23-12-1953).
[5] Subs. by Act 104 of 1976, s. 3, for "the Indian Civil Service" (w.e.f. 1-2-1977).
[6] Subs. by Act 35 of 1934, s. 2 and the Sch., for "or naval".
[7] Subs. by the A.O. 1950, for "his Majesty".
[8] The words "including His Majesty's Indian Marine Service" omitted by Act 35 of 1934, s. 2 and the Sch.
[9] Clause (21) omitted by Act 2 of 1951, s. 4, earlier clause (21) ins. by the A.O. 1950.

Section 3. Subordination of Courts

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

Section 4. Savings

(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1),

nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

Section 5. Application of the Code to Revenue Courts

(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government [1]*** may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government [2]*** may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

[1] The words "with the previous sanction of the G.G. in C", omitted by Act 38 of 1920, s. 2 and the First Sch. Pt. I.

[2] The words "with the sanction aforesaid" omitted by s. 2 and the First Sch. Pt. I, ibid.

Section 6. Pecuniary jurisdiction

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

Section 7. Provincial Small Cause Courts

The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) [1][or under the Berar Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes [2][under the said Act or Law], [3][or to Courts in [4][any part of India to which the said Act does not extend] exercising a corresponding jurisdiction] that is to say,-

(a) so much of the body of the Code as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immovable property; and

(b) the following sections, that is to say,-

section 9, sections 91 and 92, sections 94 and 95 [5][so far as they authorize or relate to-

(i) orders for the attachment of immovable property,

(ii) injunctions,

(iii) the appointment of a receiver of immovable property, or

(iv) the interlocutory orders referred to in clause (e) of section 94], and sections 96 to 112 and 115.

[1] Ins. by Act 4 of 1941, s. 2 and the Third Sch.

[2] Subs. by s. 2 and the Third Sch., ibid., for "under that Act".

[3] Ins. by Act 2 of 1951, s. 5 (w.e.f. 1-4-1951).

[4] Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part B States".

[5] Subs. by Act 1 of 1926, s. 3, for "so far as they relate to injunctions and interlocutory orders" .

Section 8. Presidency Small Cause Courts

Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, [1][77, 157 and 158], and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay:

[2][Provided that-

(1) the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the Official Gazette, direct[3] that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882 (15 of 1882), and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court;

(2) all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882 (15 of 1882) shall be deemed to have been validly made.]

[1] Subs. by Act 104 of 1976, s. 4, for "77 and 155 to 158" (w.e.f. 1-2-1977).

[2] Added by Act 1 of 1914, s. 2.

[3] For instance of such direction, see Calcutta Gazette, 1910, Pt. I, p. 814.

PART I SUITS IN GENERAL

JURISDICTION OF THE COURTS AND Res Judicata

Section 9. Courts to try all civil suits unless barred

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[1][Explanation I].-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[2][Explanation II.-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

State Amendments

Maharashtra.-

Section 9A of the Code of Civil Procedure, 1908, in its application to the State of Maharashtra (hereinafter referred to as "the principal Act"), shall be deleted.

[Vide Maharashtra Act 61 of 2018, sec. 2.]

Notwithstanding the deletion of section 9A of the principal Act,-

(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (hereinafter, in this section, referred to as "the Amendment Act"), the said issue shall be deemed to be an issue framed under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself :

Provided that, the evidence, if any, led by any party or parties to the suit, on the preliminary issue so framed under section 9A, shall be considered by the Court along with evidence, if any, led on other issues in the suit, at the time of final disposal of the suit itself ;

(2) in all the cases, where a preliminary issue framed under section 9A has been decided, holding that the Court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional Court, on the date of commencement of the Amendment Act, such revisional proceedings shall stand abated :

Provided that, where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the ground of objection in the memorandum of appeal as if it had been included in such memorandum;

(3) in all cases, where a preliminary issue framed under section 9A has been decided, holding that the Court has no jurisdiction to entertain the suit, and a challenge to such decision is pending before an appellate or revisional Court, on the date of commencement of the Amendment Act, such appellate or revisional proceedings shall continue as if the Amendment Act has not been enacted and section 9A has not been deleted :

Provided that, in case the appellate or revisional Court, while partly allowing such appeal or revision, remands the matter to the trial Court for reconsideration of the preliminary issue so framed under section 9A, upon receipt of these proceedings by the trial Court, all the provisions of the principal Act shall apply ;

(4) in all cases, where an order granting an ad-interim relief has been passed under sub-section (2) of section 9A prior to its deletion, such order shall be deemed to be an ad-interim order made under Order XXXIX of the principal Act and the Court shall, at the time of deciding the application in which such an order is made, either confirm or vacate or modify such order.

[Vide Maharashtra Act 61 of 2018, sec. 3.]

Maharashtra.-

In section 3 of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018, for clause (1), the following clause shall be substituted and shall be deemed to have been substituted with effect from 27th June 2018, being the date of commencement of the said Act, namely:-

"(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (hereinafter, in this section, referred to as "the Amendment Act"), the said issue shall be decided and disposed of by the Court under section 9A, as if the said section 9A has not been deleted;".

[Vide Maharashtra Act 72 of 2018, s. 2 (w.e.f. 27-6-2018.)]

[1] Explanation renumbered as Explanation I thereof by Act 104 of 1976, s. 5 (w.e.f. 1-2-1977).

[2] Ins. by s. 5, ibid. (w.e.f. 1-2-1977).

Section 10. Stay of suit

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [1][India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [1][India] established or continued by [2][the Central Government [3]***.] and having like jurisdiction, or before [4][the Supreme Court].

Explanation.-The pendency of a suit in a foreign Court does not preclude the Courts in [1][India] from trying a suit founded on the same cause of action.

[1] Subs. by Act 2 of 1951, s. 3, for "the States" (w.e.f. 1-4-1951).
[2] Subs. by the A.O. 1937, for "the G.G. in C".
[3] The words "or the Crown Representative" omitted by the A.O. 1948.
[4] Subs. by the A.O. 1950, for "His Majesty in Council".

Section 11. Res judicata

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[1][Explanation VII.-The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

[1] Ins. by Act 104 of 1976, s. 6 (w.e.f. 1-2-1977).

Section 12. Bar to further suit

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

Section 13. When foreign judgment not conclusive

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [1][India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in [1][India].

[1] Subs. by Act 2 of 1951, s. 3, for "the States" (w.e.f. 1-4-1951).

Section 14. Presumption as to foreign judgments

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

PLACE OF SUING

Section 15. Court in which suits to be instituted

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

Section 16. Suits to be instituted where subject-matter situate

Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) or the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

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

Explanation.-In this section "property" means property situate in [1][India].

[1] Subs. by Act 2 of 1951, s. 3, for "the States" (w.e.f. 1-4-1951).

Section 17. Suits for immovable property situate within jurisdiction of different Courts

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Section 18. Place of Institution of suit where local limits of jurisdiction of Courts are uncertain

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts, any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Section 19. Suits for compensation for wrongs to person or movables

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

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Section 20. Other suits to be instituted where defendants reside or cause of action arises

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of

the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[1]* * * * *

[2][Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in [3][India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

[1] Explanation 1 omitted by Act 104 of 1976, s. 7 (w.e.f. 1-2-1977).

[2] Subs. by s. 7, ibid., for "Explanation II" (w.e.f. 1-2-1977).

[3] Subs. by Act 2 of 1951, s. 3, for "the States" (w.e.f. 1-4-1951).

Section 21. Objections to jurisdiction

[1][(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

[2][(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]

[1] S. 21 renumbered as sub-section (1) by Act 104 of 1976, s. 8 (w.e.f. 1-2-1977).

[2] Ins. by s. 8, ibid. (w.e.f. 1-2-1977).

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

[1][No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation.-The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.]

[1] Ins. by s. 9, ibid. (w.e.f. 1-2-1977).

Section 22. Power to transfer suits which may be instituted in more than one Court

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

Section 23. To what Court application lies

(I) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall

be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

Section 24. General power of transfer and withdrawal

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [1][is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[2][(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[3][(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

[1] Subs. by Act 104 of 1976, s. 10, for "thereafter tries such suit" (w.e.f. 1-2-1977).
[2] Subs. by s. 10, ibid., for sub-section (3) (w.e.f. 1-2-1977).
[3] Ins. by s. 10, ibid. (w.e.f. 1-2-1977).

Section 25. Power of Supreme Court to transfer suits, etc

[1][(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.]

[1] Subs. by s. 11, ibid., for s. 25 (w.e.f. 1-2-1977).

INSTITUTION OF SUITS

Section 26. Institution of suits

[1][(1)] Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

[2][(2) In every plaint, facts shall be proved by affidavit.]

[3][Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.]

[1] S. 26 renumbered as sub-section (1) by Act 46 of 1999, s. 2 (w.e.f. 1-7-2002).
[2] Ins. by s. 3, ibid., (w.e.f. 1-7-2002).
[3] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

SUMMONS AND DISCOVERY

Section 27. Summons to defendants

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed [1][on such day not beyond thirty days from date of the institution of the suit.]

[1] Ins. by s. 3, ibid., (w.e.f. 1-7-2002).

Section 28. Service of summons where defendant resides in another State

(1) A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.

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

[1][(3) Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record,-

(a) in Hindi, where the language of the Court issuing the summons is Hindi, or

(b) in Hindi or English where the language of such record is other than Hindi or English, shall also be sent together with the record sent under that sub-section.]

[1] Ins. by Act 104 of 1976, s. 12 (w.e.f. 1-5-1977).

Section 29. Service of foreign summonses

[1][Summonses and other processes issued by-

(a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or

(b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification..... in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.]

[1] Subs. by Act 2 of 1951, s. 6, for s. 29 (w.e.f. 1-4-1951).

Section 30. Power to order discovery and the like

Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

Section 31. Summons to witness

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

Section 32. Penalty for default

The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may-

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him [1][not exceeding five thousand rupees];

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

[1] Subs. by Act 46 of 1999, s. 4, for "not exceeding five hundred rupees" (w.e.f. 1-7-2002).`

JUDGMENT AND DECREE

Section 33. Judgment and decree

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

INTEREST

Section 34. Interest

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [1][with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

[2][Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest [3][on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

[1] Subs. by Act 66 of 1956, s. 2, for certain words (w.e.f. 1-1-1957).
[2] Ins. by Act 104 of 1976, s. 13 (w.e.f. 1-7-1977).
[3] Subs. by Act 66 of 1956, s. 2, for "on such aggregate sum as aforesaid" (w.e.f. 1-1-1957).

COSTS

Section 35. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

[1]* * * * *

[2][35. Costs.- (1) In relation to any Commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

(a) whether costs are payable by one party to another;

(b) the quantum of those costs; and

(c) when they are to be paid.

Explanation.-For the purpose of clause (a), the expression "costs" shall mean reasonable costs relating to-

(i) the fees and expenses of the witnesses incurred;

(ii) legal fees and expenses incurred;

(iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party:

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including-

(a) the conduct of the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(c) whether the party had made a frivolous counter-claim leading to delay in the disposal of the case;

(d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and

(e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay--

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date.]

State Amendments

Jammu and Kashmir and Ladakh (UTs).-

In Section 35, in sub-section (1) omit "Commercial".

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Sub-section (3) omitted by s. 3, ibid. (w.e.f. 1-1-1957).

[2] Subs. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Section 35A. Compensatory costs in respect of false or vexatious claims or defences

[1][(1) If in any suit or other proceedings [2][including an execution proceeding but [3][excluding an appeal or a revision]] any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, [4][if it so thinks fit], may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.

[5][(2) No Court shall make any such order for the payment of an amount exceeding [6][three thousand rupees] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887), [7][or under a corresponding law in force in [8][any part of India to which the said Act does not extend]] and not being a Court constituted [9][under such Act or law], are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.]

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

State Amendments

Jammu and Kashmir and Ladakh (UTs).-

In Section 35A, omit sub-section (2). [Vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

Uttar Pradesh

Amendment of section 35-A of Act V of 1908.-In the Code of Civil Procedure, 1908 (hereinafter in this Chapter referred to as the principal Act) in section 35-A, after sub- section (1), the following sub-section shall be inserted, namely :-

"Revision.-(1-A) The provisions of sub-section (1) shall mutatis mutandis apply to an appeal where the appellate court confirms the decision of the trial court and the trial court has not awarded, or has awarded insufficient, compensatory cost under that sub-section."

[Vide Uttar Pradesh Act 57 of 1976, s. 2]

Uttar Pradesh

Section 35-A or Schedule of the Act.-(1) For the existing sub-section (1), the following shall be substituted ;

"(1) If in any suit or other proceeding, including proceedings in execution, but not being an appeal or revision, the court finds that the claim or defense or any part thereof is false or vexatious to the knowledge of the party by whom it has been put forward and if such claim or defense or such part is disallowed abandoned or withdrawn in whole or in part, the court may, after recording its reasons for holding such claim or defense to be false or vexatious, make an order for the payment to the successful party of costs by way of compensation irrespective of the decision on other issues in the case." [Vide Uttar Pradesh Act XXIV of 1954, s. 3]

[1] S. 35A ins. by Act 9 of 1922, s. 2, which, under section 1(2) thereof may be brought into force in any State by the State Government on any specified date. It has been so brought into force in Bombay, Bengal, U.P., Punjab, Bihar, C.P., Assam, Orissa and Madras.

[2] Subs. by Act 66 of 1956, s. 4, for "not being an appeal" (w.e.f. 1-1-1957).

[3] Subs. by Act 104 of 1976, s. 14, for "excluding an appeal" (w.e.f. 1-2-1977).

[4] Subs. by Act 66 of 1956, s. 4, for certain words (w.e.f. 1-1-1957).

[5] Sub-section (2) of section 35(A), shall be omitted in its application to commercial disputes of a specified value, vide Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

[6] Subs. by Act 104 of 1976, s. 14, for "one thousand rupees" (w.e.f. 1-2-1977).

[7] Ins. by Act 2 of 1951, s. 7 (w.e.f. 1-4-1951).

[8] Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

[9] Subs. by Act 2 of 1951, s. 7, for "under that Act" (w.e.f. 1-4-1951).

Section 35B. Costs for causing delay

[1][(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit-

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of-

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendent was ordered to pay such costs.

Explanation.-Where separate defences have been raised by the defendant or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.]

[1] Ins. by Act 104 of 1976, s. 15 (w.e.f. 1-2-1977).

PART II EXECUTION

Section 36. Application to orders

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

[1] Subs. by s. 16, ibid., for section 36 (w.e.f. 1-2-1977).

Section 37. Definition of Court which passed a decree

The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first

instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

[1][Explanation.-The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]

[1] Ins. by Act 104 of 1976, s. 17 (w.e.f. 1-2-1977).

COURTS BY WHICH DECREES MAY BE EXECUTED

Section 38. Court by which decree may be executed

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

Section 39. Transfer of decree

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court [1][of competent jurisdiction],-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

[1][(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.]

[2][(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.]

State Amendment

Uttar Pradesh

Amendment of section 39 of Act no. 5 of 1908.- In section 39 of the Code of Civil Procedure, 1908, hereinafter referred to as the said Code, for sub-section (3), the following sub- section shall be substituted, namely :-

"(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction of the amount or value of the subject-matter of the suit wherein the decree was passed does not exceed the pecuniary limits, if any, of its ordinary jurisdiction at the time of making the application for the transfer of decree to it, notwithstanding that it had otherwise no jurisdiction to try the suit."

[Vide Uttar Pradesh Act 31 of 1978, s. 2]

[1] Ins. by s. 18, ibid. (w.e.f. 1-2-1977).

[2] Ins. by Act 22 of 2002, s. 2 (w.e.f. 1-7-2002).

Section 40. Transfer of decree to Court in another State

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

Section 41. Result of execution proceedings to be certified

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

Section 42. Powers of Court in executing transferred decree

[1][(1)] The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons is disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had passed by itself.

[2][(2) Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:-

(a) power to send the decree for execution to another Court under section 39;

(b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:-

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c) of sub-rule (1) of rule 50 of Order XXI.]

State Amendment

Uttar Pradesh

Substitution of new section for section 42 of Act V of 1908.- For section 42 of the Code of Civil Procedure, 1908, as amended in its application to Uttar Pradesh (hereinafter referred to as the said Code) the following section shall be substituted and be deemed

to have been substituted with affect from December 2, 1968, namely :-

"42. Power of court in executing transferred decree.- (1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree, and its order in executing such

decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

(2) Without prejudice to the generality of the provisions of sub- section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely -

(a) power to send the decree for execution to another Court under section 39 ;

(b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50 ;

(c) power to order attachment of a decree;

(d) power to decide any question relating to the bar of limitation to the executability of the decree ;

(e) power to record payment or adjustment under rule 2 of Order XXI;

(f) power to order stay of execution under rule 29 of Order XXI;

(g) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person other than a person as is referred to in clause (b) or clause (c) of sub-rule (1) of rule 50 of Order XXI.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution, the power to order execution at the instance of the transferee of a decree."

[Vide Uttar Pradesh Act 14 of 1970, s. 2]

[1] S. 42 renumbered as sub-section (1) by Act 104 of 1976, s. 19 (w.e.f. 1-2-1977).

[2] Ins. by s. 19, ibid. (w.e.f. 1-2-1977).

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

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

[1] Subs. by Act 2 of 1951, s. 8, for s. 43 (w.e.f. 1-4-1951).

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

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

[1] Subs. by s. 9, ibid., for s. 44 (w.e.f. 1-4-1951).

Section 44A. Execution of decrees passed by Courts in reciprocating territory

[1][(1) Where a certified copy of a decree of any of the superior Courts of [2]*** any reciprocating territory has been filed in a District Court, the decree may be executed in [3][India] as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

[4][Explanation 1.-"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.-"Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.]]

[1] Ins. by Act 8 of 1937, s. 2.
[2] The words "the United Kingdom or" omitted by Act 71 of 1952, s. 2.
[3] Subs. by Act 2 of 1951, s. 3, for "the States" (w.e.f. 1-4-1951).
[4] Subs. by Act 71 of 1952, s. 2, for Explanations 1 to 3.

Section 45. Execution of decrees outside India

[1][So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established [2]*** by the authority of the Central Government [3][outside India] to which the State Government has by notification in the Official Gazette declared this section to apply.]

[1] Subs. by the A.O. 1937, for s. 45.
[2] The words "or continued" omitted by the A.O. 1948.
[3] Subs. by the A.O. 1950, for "in any Indian State".

Section 46. Precepts

(1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

Section 47. Questions to be determined by the Court executing decree

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[1]* * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[2][Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

State Amendment

Uttar Pradesh

Amendment of section 47.- In section 47 of the principal Act, Explanation II inserted by the U. P. Civil Laws (Reforms and Amendment) Act, 1954, shall be omitted.

[Vide Uttar Pradesh Act 57 of 1976, s. 3]

Limit of time for execution

[1] Sub-section (2) omitted by Act 104 of 1976, s. 20 (w.e.f. 1-2-1977).
[2] Subs. by s. 20, ibid. for the Explanation (w.e.f. 1-2-1977).

LIMIT OF TIME FOR EXECUTION

Section 48. Execution barred in certain cases

[Execution barred in certain cases.] Rep. by the Limitation Act, 1963 (36 of 1963), s. 28 (w.e.f. 1-1-1964).

State Amendment

Rajasthan

Insertion of new section 48 A.- After section 48 of the Code of Civil Procedure, 1908 (Central Act V of 1908), in its application thereof to the State of Rajasthan, the following new section shall be, and be deemed always to have been inserted, namely:--

"48-A- Varied application of section 48.- For the purposes of the application of section 48 to the State of Rajasthan;-

(i) a decree, made before the twenty-fifth day of January, 1950, in those parts of Rajasthan where a corresponding provision did not then exist, shall, unless it shall have becomr time-barred or otherwise infructuous before the said day in accordance with any law then prevailing in those parts, be deemed to have been made on the said day, and

(ii) Where a decree might have been made before the twenty-fifth day of January, 1950 in those parts of Rajasthan where a corresponding provision then existed, with a period longer than twelve years provided therein such longer period or the period of twelve years form the said day whichever expires first shall be the period after which, according to section 48, no order for execution shall be made". [Vide Rajasthan Act XX of 1952, s. 2]

Transferees and legal representatives

TRANSFEREES AND LEGAL REPRESENTATIVES

Section 49. Transferee

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

Section 50. Legal representative

(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

PROCEDURE IN EXECUTION

Section 51. Powers of Court to enforce execution

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

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison [1][for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

[2][Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. Explanation.-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.]

[1] Ins. by Act 104 of 1976, s. 21 (w.e.f. 1-2-1977).

[2] Ins. by Act 21 of 1936, s. 2.

Section 52. Enforcement of decree against legal representative

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

Section 53. Liability of ancestral property

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

Section 54. Partition of estate or separation of share

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

State Amendment

Karnataka.-

For Section 54, the following Section shall be substituted, namely.-

"54. Partition of estate or separation of share.-Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share of such an estate shall be made by the Court in accordance with the law if any, for the time being in force relating to the partition or the separate possession of shares, and if necessary on the report of a revenue officer, not below the rank of Tahsildar or such other person as the Court may appoint as Commissioner in that behalf."

[Vide Karnataka Act 36 of 1998, sec. 2.]

Arrest and detention

ARREST AND DETENTION

Section 55. Arrest and detention

(1) A judgment-debtor may be arrested in execution of a decree at, any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he [1][may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court [2][may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

[1] Subs. by Act 3 of 1921, s. 2, for "will be discharged".
[2] Subs. by Act 3 of 1921, s. 2, for "shall release".

Section 56. Prohibition of arrest or detention of women in execution of decree for money

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

Section 57. Subsistence-allowance

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

Section 58. Detention and release

(1) Every person detained in the civil prison in execution of a decree shall be so detained,-

(a) where the decree is for the payment of a sum of money exceeding [1][[2][five thousand rupees], for a period not exceeding three months, and,]

[3][(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:]

Provided that he shall be released from such detention before the expiration of the [4][said period of detention] -

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

[5][(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed [6][two thousand rupees.]]

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

[1] Subs. by Act 104 of 1976, s. 22, for certain words (w.e.f. 1-2-1977).
[2] Subs. by Act 46 of 1999, s. 5, "one thousand rupees" (w.e.f. 1-7-2002).
[3] Subs. by s. 5, ibid., for clause (b) (w.e.f. 1-7-2002).
[4] Subs. by Act 104 of 1976, s. 22, for certain words (w.e.f. 1-2-1977).
[5] Ins. by s. 22, ibid. (w.e.f. 1-2-1977).
[6] Subs. by Act 46 of 1999, s. 5, for "five hundred rupees" (w.e.f. 1-7-2002).

Section 59. Release on ground of illness

(1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom-

(a) by the State Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness. (4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in civil prison shall not in the aggregate exceed that prescribed by section 58.

ATTACHMENT

Section 60. Property liable to attachment and sale in execution of decree

[1](1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:-

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to [2][an agriculturist or a labourer or a domestic servant] and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government [3][or of a local authority or of any other

employer], or payable out of any service family pension fund [4]notified in the Official Gazette by [5][the Central Government or the State Government] in this behalf, and political pensions;

[6][(h) the wages of labourers and domestic servants, whether payable in money or in kind; [7]***]

[8][(i) salary to the extent of [9][the first [10][[11][one thousand rupees]] and two third of the remainder] [12][in execution of any decree other than a decree for maintenance]:

[13][Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that deecree.]]

[12][(ia) one-third of the salary in execution of any decree for maintenance;]

[14][(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;]

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, [15][1925], (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

[3][(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;]

[16][(1) any allowance forming part of the emoluments of any [17][servant of the [18][Government]] or of any servant of a railway company or local authority which the [19][appropriate Government] may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to [20][any such servant] while under suspension;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by [21][any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from .sale for the recovery of an arrear of such revenue. [22][Explanation I.-The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.]

[23][[24][Explanation II.-In clauses (i) and (ia)], "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.]

[25][Explanation [26][III]-In clause (1) "appropriate Government" means-

(i) as respects any [27][person] in the service of the Central Government, or any servant of [28][a Railway Administration] or of a cantonment authority or of the port authority of a major port, the Central Government; [29]* * * * *

(iii) as respects any other [30][servant of the [31][Government]] or a servant of any other [32]*** local authority, the State Government.] [33][Explanation IV-For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled unskilled or semi-skilled labourer.

Explanation V-For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI-For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land-

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.]

13[(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.]

(2) Nothing in this section shall be deemed [34]*** to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land [35]***

[36]* * * * *

State Amendments

Kerala.-

In clause (g) of the Proviso to sub-section (1) of section 60, after the words "stipends and gratuities allowed by pensioners of the Government" the words "or of a local authority" shall be inserted. [Vide Kerala Act 13 of 1957, s. 3]

In the proviso to sub section (1) of section 60 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), after clause (g), the following clause shall be inserted, namely: -

"(gg) all moneys payable to the beneficiaries under the Family Benefit Scheme for the employees of the Government of Kerala." [Vide Kerala Act 1 of 1988, s. 2.] Himachal Pradesh.-

Amendment in section 60. - (1) In Section 60 sub-section (1):

(i) at the end of clause (c), add the following:

or compensation paid for such houses and buildings (including compensation for the materials and the sites and the land referred to above) acquired for a public purpose; (ii) after clause (c), the following clause shall be inserted, namely: -

(cc) compensation paid for agricultural lands belonging to agriculturists and acquired for a public purpose; [Vide Himachal Pradesh Act 6 of 1956, sec. 2.]

Tamil Nadu

Amendment of section 60, Central Act V of 1908.-In clause (g) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908, after the words "stipends and gratuities allowed to pensioners of the Government", the words "or of a authority" shall be inserted. [Vide Tamil Nadu Act XXXIV of 1950, s. 2]

Rajasthan

Amendment of section 60, Central Act V of 1908.-In clause (b) of the proviso to sub-section (1) of section 60 of the code of Civil Procedure, 1908 (Central Act V of 1908) in its application to the State of Rajasthan, after the word, "agriculturist" the words "his milch cattle and those likely to calve within two years" shall be inserted.

[Vide Rajasthan Act 19 of 1958, s. 2]

Uttar Pradesh

Amendment of section 60, Central Act V of 1908.- In the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Central Act V of 1908) in the application thereof to the State of Rajasthan,-

(i) after clause (k), the following clause shall be inserted, namely:-

(kk) moneys payable under Life Insurance Certificates issued in pursuance of the Rajasthan Government Servants Insurance Rules, 1953;" and (ii) after explanation 3 the following explanation shall be inserted, namely:-"Explanation 4.-Where any money payable to a Government servant of the State is exempt from

attachment under the provision contained in clause (kk), such money shall remain exempt from attachment notwithstanding the fact that owing to the death of a Government servant it is payable to some other person." [Vide Rajasthan Act 16 of 1957, s. 2]

Uttar Pradesh

Addition of explanation (1-A) to sub-section (1) of section 60.- After Explanation (1) of sub-section (1) of section 60 of the Code of Civil Procedure, 1908, insert the following Explanation (I-A) ;

"Explanation (I-A) - Particulars mentioned in clause (c) are exempt from sale in execution of a decree whether passed before or after the commencement of the Code of Civil Procedure (United Provinces Amendment) Act, 1908, for enforcement of a mortgage or charge thereon".

[Vide Uttar Pradesh Act XXXV of 1948, s. 2]

[1] For amendments to s. 60, in its application to East Punjab, see the Punjab Relief of Indebtedness Act, 1934 (Pun. Act 7 of 1934), s. 35, as amended by Pun. Acts 12 of 1940 and 6 of 1942.

[2] Subs. by Act 104 of 1976, s. 23, for "an agriculturist" (w.e.f. 1-2-1977)

[3] Ins. by s. 23, ibid. (w.e.f. 1-2-1977).

[4] For such a notification, see Gazette of India, 1909, Pt. I, p. 5.

[5] Subs. by the A.O. 1937, for "the G.G. in C."

[6] Subs. by Act 9 of 1937, s. 2, for clauses (h) and (i). The amendments made by that section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937, see ibid., section 3.

[7] The words "and salary, to the extent of the first hundred rupees and one-half the remainder of such salary" omitted by Act 5 of 1943, s. 2.

[8] Subs. by s. 2, ibid., for clause (i) and the proviso.

[9] Subs. by Act 26 of 1963, s. 2, for "the first hundred rupees".

[10] Subs. by Act 104 of 1976, s. 23, for "two hundred rupees and one-half the remainder" (w.e.f. 1-2-1977).

[11] Subs. by Act 46 of 1999, s. 6, for "four hundred rupees" (w.e.f. 1-7-2002).
[12] Ins. by Act 66 of 1956, s. 6 (w.e.f. 1-1-1957).
[13] Subs. by Act 104 of 1976, s. 23, for "the proviso" (w.e.f. 1-2-1977).
[14] Subs. by s. 23, ibid., for clause (j) (w.e.f. 1-2-1977).
[15] Subs. by Act 9 of 1937, s. 2, for "1897".
[16] Subs. by s. 2, ibid., for the original clause (l), see also footnote 3.
[17] Subs. by Act 5 of 1943, s. 2, for "public officer".
[18] Subs. by the A.O. 1950 for "crown".
[19] Subs. by the A.O. 1937, for "G.G. in C".
[20] Subs. by Act 5 of 1943, s. 2, for "any such officer or servant".
[21] Subs. by the A.O. 1937, for "any law passed under the Indian Councils Act 1861 and 1892".
[22] Subs. by Act 104 of 1976, s. 23, for Explanation I (w.e.f. 1-2-1977).
[23] Added by Act 9 of 1937, s. 2, The amendments made by that section shall not effect in respect of any proceeding arising out of any suit instituted before 1st June, 1937, see ibid., section 3.
[24] Subs. by Act 104 of 1976, s. 23, "Explanation 2.-in clauses (h) and (i)" (w.e.f. 1-2- 1977).
[25] Ins. by the A.O. 1937.
[26] Subs. by Act 104 of 1976, s. 23, for figure "3" (w.e.f. 1-2-1977).
[27] Subs. by Act 5 of 1943, s. 2, for "Public officer".
[28] Subs. by the A.O. 1950, for "a Federal Railway".
[29] Clause (ii) omitted by the A.O. 1948.
[30] Subs. by Act 5 of 1943, s. 2, for "public officer".
[31] Subs. by the A.O. 1950 for "crown".
[32] The words "railway or" omitted by the A.O. 1950.
[33] Ins. by Act 104 of 1976, s. 23 (w.e.f. 1-2-1977).
[34] The brackets and letter "(a)", rep. by Act 10 of 1914, s. 3 and the Second Schedule.
[35] The word "or" rep. by s. 3, ibid., and the Second Schedule.
[36] Clause (b) rep. by s. 3 ibid., and the Second Schedule.

Section 61. Partial exemption of agricultural produce

The State Government [1]*** may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural

produce, as may appear to the State Government to be necessary for the purpose of providing until the

next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

[1] The words "with the previous sanction of the G.G. in C." omitted by Act 38 of 1920, s. 2 and the First Schedule.

Section 62. Seizure of property in dwelling-house

(1) No person executing any process under this Code directing or authorising seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Section 63. Property attached in execution of decrees of several Courts

(1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

[1][Explanation.-For the purposes of sub-section (2), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent

of the purchase price payable by him.]

[1] Explanation ins. by Act 104 of 1976, s. 24 (w.e.f. 1-2-1977).

Section 64. Private alienation of property after attachment to be void

[1][(1)] Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

[2][(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.]

Explanation.-For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

[1] Section 64 renumbered as sub-section (1) by Act 22 of 2002, s. 3 (w.e.f. 1-7-2002).

[2] Ins. by Act 22 of 2002, s. 3 (w.e.f. 1-7-2002).

SALE

Section 65. Purchaser's title

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

Section 66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff

[Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.] - Rep. by Act, 1988 (45 of 1988), s. 7 (w.e.f. 19-5-1988).

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

[1][(1)] The State Government [2]*** may, by notification in the Official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interest are so uncertain or undetermined as, in the opinion of the State Government, to make it impossible to fix their value.

[3][(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the State Government may, by notification in the Official Gazette declare such rules to be in force, or may [2]*** by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.]

[4][(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.]

[1] Section 67 renumbered as sub-section (1) by Act 1 of 1914, s. 3.

[2] The words "with the previous sanction of the G.G. in C." omitted by Act 38 of 1920, s. 2 and the Schedule.

[3] Added by Act 1 of 1914, s. 3.

[4] Ins. by Act 20 of 1983, s. 2 and the Schedule (w.e.f. 15-3-1984).

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVABLE PROPERTY

Section 68. Power to prescribe rules for transferring to collector execution of certain decrees

[Power to prescribe rules for transferring to collector execution of certain decrees.] - Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 7 (w.e.f. 1-1-1957).

Section 69. Provisions of Third Schedule to apply

[Provisions of Third Schedule to apply.] - Rep. by s. 7 ibid, (w.e.f. 1-1-1957).

Section 70. Rules of Procedure

[Rules of Procedure.] - Rep. by s. 7 ibid, (w.e.f. 1-1-1957).

Section 71. Collector deemed to be acting judicially

[Collector deemed to be acting judicially.] - Rep. by s. 7 ibid, (w.e.f. 1-1-1957).

Section 72. Where Court may authorize Collector to stay Public Sale of Land

[Where Court may authorize Collector to stay Public Sale of Land.] -Rep. by s. 7, ibid. (w.e.f. 1-1-1957).

DISTRIBUTION OF ASSETS

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

(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons:

Provided as follows:-

(a) where any property is sold subject to a mortgage or charge, the mortgage or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied-

First, in defraying the expenses of the sale; Secondly, in discharging the amount due under the decree; Thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and

Fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have no obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

RESISTANCE TO EXECUTION

Section 74. Resistance to execution

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

PART III INCIDENTAL PROCEEDINGS

Section 75. Power of Court to issue commissions

Subject to such conditions and limitations as may be prescribed, the Court may issue a commission-

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition; [1][(e) to hold a scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(g) to perform any ministerial act.]

[1] Ins. by Act 104 of 1976, s. 26 (w.e.f. 1-2-1977).

Section 76. Commission to another Court

(1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

Section 77. Letter of request

In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within [1][India.]

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Section 78. Commissions issued by foreign Courts

[1][Subject to such conditions and limitations as may be prescribed the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of-

(a) Courts situate in any part of India to which the provisions of this Code do not extend; or

(b) Courts established or continued by the authority of the Central Government outside India; or

(c) Courts of any State or country outside India.]

[1] Subs. by s. 11, ibid., for s. 78 (w.e.f. 1-4-1951).

PART IV SUITS IN PARTICULAR CASES SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

Section 79. Suits by or against Government

[1][In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, [2][the Union of India], and

(b) in the case of a suit by or against a State Government, the State.]

[1] Subs. by the A.O. 1948, for s. 79.

[2] Subs. by the A.O. 1950, for "the Dominion of India".

Section 80. Notice

[1][(1)] [2][Save as otherwise provided in sub-section (2), no suits [3][shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [4][delivered to, or left at the office of-]

(a) in the case of a suit against the Central Government, [5][except where it relates to a railway] a Secretary to that Government;

[6][(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

[7][(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]

(c) in the case of a suit against [8][any other State Government], a Secretary to that Government or the Collector of the district; [9]***

[10]* * * * * and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

[11][(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government

or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice-

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.]

[1] S. 80 renumbered as sub-section (1) by Act 104 of 1976, s. 27 (w.e.f. 1-2-1977).
[2] Subs. by s. 27, ibid., for "No suit shall be instituted" (w.e.f. 1-2-1977).
[3] Subs. by Act 26 of 1963, s. 3, for "shall be instituted against the Government" (w.e.f. 5-6-1964). The words in italics were subs. by the A.O. 1948, for "Instituted against the Crown".
[4] Subs. by the A.O. 1937, for "in the case of the Secretary of State in Council, delivered to, or left at the office of a Secretary to the L.G. or the Collector of the District".
[5] Ins. by Act 6 of 1948, s. 2.
[6] Clause (aa) ins. by Act 6 of 1948, s. 2 and relettered as clause (b) and the Former clause (b) omitted by the A.O. 1948.
[7] Ins. by Act 26 of 1963, s. 3 (w.e.f. 5-6-1964).
[8] Subs. by s. 3, ibid., for "a State Government" (w.e.f. 5-6-1964).
[9] The word "and" omitted by the A.O. 1948.
[10] Clause (d) omitted by the A.O. 1948.
[11] Ins. by Act 104 of 1976, s. 27 (w.e.f. 1-2-1977).

Section 81. Exemption from arrest and personal appearance

In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity-

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

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

Section 82. Execution of decree

[1][(1) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (2).]

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of [2][such decree].

[3][(3) The provisions of sub-sections (1) and (2) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award-

(a) is passed or made against [4][the Union of India] or a State or a public officer in respect of any such act as aforesaid, whether by a Court or by any other authority; and

(b) is capable of being executed under the provisions of this Code or of any other law for the time being in force as if it were a decree.]

[1] Subs. by s. 28, ibid., for sub-section (1) (w.e.f. 1-2-1977).
[2] Subs. by s. 28, ibid., for "such report" (w.e.f. 1-2-1977).
[3] Ins. by Act 32 of 1949, s. 2.
[4] Subs. by the A.O. 1950, for "the Dominion of India".

SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS

Section 83. When aliens may sue

Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any Court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such Court.

Explanation.-Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of

this section, be deemed to be an alien enemy residing in a foreign country.

Section 84. When foreign States may sue

A foreign State may sue in any competent Court:

Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

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

(1) The Central Government may, at the request of the Ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of such Ruler, by order, appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons so appointed shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of such Ruler.

(3) A person appointed under this section may authorise or appoint any other persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

Section 86. Suits against foreign Rulers, Ambassadors and Envoys

(1) No. [1]*** foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid [2][a foreign State] from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which [3][the foreign State] may be sued, but it shall not be given, unless it appears to the Central Government that [3][the foreign State]-

(a) has instituted a suit in the Court against the person desiring to sue [4][it], or

(b) by [5][itself] or another, trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to [4][it] by this section.

[6][(3) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.]

(4) The preceding provisions of this section shall apply in relation to-

[7][(a) any ruler of a foreign State;]

[8][(aa)] any Ambassador or Envoy of a foreign State;

(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff [9][of the foreign State or the staff or retinue of the Ambassador] or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf,

[10][as they apply in relation to a foreign State].

[11][(5) The following persons shall not be arrested under this Code, namely: -

(a) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(d) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the

Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.]

[1] The words "Ruler of a" omitted by Act 104 of 1976, s. 29 (w.e.f. 1-2-1977).
[2] Subs. by s. 29, ibid., for "a Ruler" (w.e.f. 1-2-1977).
[3] Subs. by s. 29, ibid., for "the Ruler (w.e.f. 1-2-1977).
[4] Subs. by s. 29, ibid., for "him" (w.e.f. 1-2-1977).
[5] Subs. by 29, ibid., for "himself" (w.e.f. 1-2-1977).
[6] Subs. by s. 29, ibid., for sub-section (3) (w.e.f. 1-2-1977).
[7] Ins. by s. 29, ibid. (w.e.f. 1-2-1977).
[8] Clause (a) re-lettered as clause (aa) by Act 104 of 1976, s. 29 (w.e.f. 1-2-1977).
[9] Subs. by s. 29, ibid, for "or retinue of the Ruler, Ambassador" (w.e.f. 1-2-1977).
[10] Subs. by s. 29, ibid, for "as they apply in relation to the Ruler of a foreign State" (w.e.f. 1-2-1977).
[11] Ins. by s. 29, ibid. (w.e.f. 1-2-1977).

Section 87. Style of foreign Rulers as parties to suits

The Ruler of a foreign State may sue, and shall be sued, in the name of his State:

Provided that in giving the consent referred to in section 86, the Central Government may direct that the Ruler may be sued in the name of an agent or in any other name.

Section 87A. Definitions of "Foreign State" and "Rulers"

(1) In this Part,-

(a) "foreign State" means any State outside India which has been recognised by the Central Government; and

(b) "Ruler", in relation to a foreign State, means the person who is for the time being recognised by the Central Government to be the head of that State.

(2) Every Court shall take judicial notice of the fact-

(a) that a State has or has not been recognised by the Central Government;

(b) that a person has or has not been recognised by the Central Government to be the head of a State.

SUITS AGAINST RULERS OF FORMER INDIAN STATES

Section 87B. Applications of sections 85 and 86 to Rulers of former Indian States

[1][(1) In the case of any suit by or against the Ruler of any former Indian State which is based wholly or in part upon a cause of action which arose before the commencement of the Constitution or any proceeding arising out of such suit, the provisions of section 85 and sub-sections (1) and (3) of section 86 shall apply in relation to such Ruler as they apply in relation to the Ruler of a foreign State.]

(2) In this section-

(a) "former Indian State" means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section; [2]***

[3][(b) "Commencement of the Constitution" means the 26th day of January, 1950; and

(c) "Ruler", in relation to a former Indian State, has the same meaning as in article 363 of the Constitution.]

[1] Subs. by Act 54 of 1972, s. 3, for sub-section (1) (w.e.f. 9-9-1972).
[2] The word "and" omitted by s. 3, ibid. (w.e.f. 9-9-1972).
[3] Subs. by Act 54 of 1972, s. 3, for clause (b) (w.e.f. 9-9-1972).

INTERPLEADER

Section 88. Where interpleader suit may be instituted

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

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

PART V SPECIAL PROCEEDINGS

Section 89. Settlement of disputes outside the Court

[1][(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:-

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Were a dispute has been referred-

(a) | for | arbitration | or | conciliation, | the | provisions | of | the | Arbitration | and

Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall .apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.]

[1] Ins. by Act 46 of 1999, s. 7 (w.e.f. 1-7-2002), Earlier rep by Act 10 of 1940, s. 49 or the Third Schedule.

SPECIAL CASE

Section 90. Power to state case for opinion of Court

Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC

Section 91. Public nuisances and other wrongful acts affecting the public

[1][(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.]

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

[1] Subs. by s. 30, ibid., for sub-section (1) (w.e.f. 1-2-1977).

Section 92. Public charities

[1](1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [2][leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree :-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

[3][(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [4][or by any corresponding law in force in [5][the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[6][(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]

[1] S. 92 shall not apply to any religious trust in Bihar, see Bihar Act 1 of 1951.

[2] Subs. by Act 104 of 1976, s. 31, for "consent in writing of the Advocate-General" (w.e.f. 1-2-1977).

[3] Ins. by Act 66 of 1956, s. 9 (w.e.f. 1-1-1957).

[4] Ins. by Act 2 of 1951, s. 13 (w.e.f. 1-4-1951).

[5] Subs. by the A.O. (No. 2), 1956, for "a Part B State".

[6] Ins. by Act 104 of 1976, s. 31 (w.e.f. 1-2-1977).

Section 93. Exercise of powers of Advocate-General outside presidency-towns

The powers conferred by sections 91 and 92 on the Advocate-General may, outside the presidency-towns, be, with the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint in this behalf.

PART VI SUPPLEMENTAL PROCEEDINGS

Section 94. Supplemental proceedings

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,-

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Section 95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds

(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,-

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount [1][not exceeding fifty thousand rupees], as it deems a reasonable compensation to the defendant for the [2][expense or injury (including injury to reputation) caused to him]:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniar jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

[1] Subs. by Act 46 of 1999, s. 8, for "not exceeding one thousand rupees" (w.e.f. 1-7-2002).

[2] Subs. by Act 104 of 1976, s. 32, for "expense or injury caused to him" (w.e.f. 1-2-1977).

PART VII APPEALS

Section 96. Appeal from original decree

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[1][(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [2][ten thousand rupees].]

[1] Ins. by Act 104 of 1976, s. 33 (w.e.f. 1-2-1977).

[2] Subs. by Act 46 of 1999, s. 9, for "three thousand rupees" (w.e.f. 1-7-2002).

Section 97. Appeal from final decree where no appeal from preliminary decree

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

Section 98. Decision where appeal heard by two or more Judges

(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is [1][composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench] and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

[2][(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters to patent of any High Court.]

[1] Subs. by Act 104 of 1976, s. 34, for certain words (w.e.f. 1-2-1977).

[2] Ins. by Act 18 of 1928, s. 2 and the First Schedule.

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

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any

misjoinder [1][or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

[2][Provided that nothing in this section shall apply to non-joinder of a necessary party.]

[1] Ins. by Act 104 of 1976, s. 35 (w.e.f. 1-2-1977).
[2] Proviso Added by s. 35, ibid. (w.e.f. 1-2-1977).

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

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

[1] Ins. by s. 36, ibid. (w.e.f. 1-2-1977).

APPEALS FROM APPELLATE DECREES

Section 100. Second appeal

[1][(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]

State Amendment

Kerala.

In sub-section (1) of section 100 of the Principal Act, after clause (c), the following clause shall be added, namely:

(d) the finding of the lower appellate court on any question of fact material to the right decision of the case on the merits being in conflict with the finding of the Court of first instance on such question.

[Vide Kerala Act 13 of 1957 s. 4]

[1] Subs. by s. 37, ibid., for section 100 (w.e.f. 1-2-1977).

Section 100A. No further appeal in certain cases

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

[1] Subs. by Act 22 of 2002, s. 4, for section 100A (w.e.f. 1-7-2002).

Section 101. Second appeal on no other grounds

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

Section 102. No second appeal in certain cases

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

[1] Subs. by s. 5, ibid., for section 102 (w.e.f. 1-7-2002).

Section 103. Power of High Court to determine issue of fact

[1][In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower

Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.]

[1] Subs. by Act 104 of 1976, s. 40, for section 103 (w.e.f. 1-2-1977).

APPEALS FROM ORDERS

Section 104. Orders from which appeal lies

(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:-

[1]* * * * *

[2][(ff) an order under section 35A;]

[3][(ffa) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

[4][Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal under this section.

[1] Clauses (a) to (f) omitted by Act 10 of 1940, s. 49 and the Sch. III.
[2] Ins. by Act 9 of 1922, s. 3, see also foot-note to section 35A, Supra.
[3] Ins. by Act 104 of 1976, s. 41 (w.e.f. 1-2-1977).
[4] Ins. by Act 9 of 1922, s. 3, see also foot-note to section 35A, Supra.

Section 105. Other orders

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand [1]*** from which an appeals lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

[1] The Words "made after the commencement of this Code" omitted by Act 104 of 1976, s. 42 (w.e.f. 1-2-1977).

Section 106. What Courts to hear appeals

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

GENERAL PROVISIONS RELATING TO APPEALS

Section 107. Powers of Appellate Court

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Section 108. Procedure in appeals from appellate decrees and orders

The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals-

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not

provided.

APPEALS TO THE SUPREME COURT

Section 109. When appeals lie to the Supreme Court

[1][Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies-

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

[1] Subs. by Act 49 of 1973, s. 2, for section 109 (w.e.f. 29-11-1973).

Section 110. Value of subject matters

[Value of subject matters.] Rep. by the Code of Civil Procedure (Amendment) Act, 1973

(49 of 1973), s. 3 (w.e.f. 29-11-1973).

Section 111. Bar of certain appeals

[Bar of certain appeals.] Rep. by the A.O. 1950.

Section 111A. Appeals to Federal Court

[1][[Appeals to Federal Court] Rep. by the Federal Court Act, 1941 (21 of 1941), s. 2 (w.e.f. 1-9-1942).

[1] Ins. by the A.O. 1937.

Section 112. Savings

[1][(1) Nothing contained in this Code shall be deemed-

(a) to affect the powers of the Supreme Court under article 136 or any other provision of the Constitution; or

(b) to interfere with any rules made by the Supreme Court, and for the time being in force for the presentation of appeals to that Court, or their conduct before that Court.]

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction or to appeals from orders and decrees of Prize Courts.

[1] Subs. by the A.O. 1950, for the former sub-section (1).

PART VIII REFERENCE, REVIEW AND REVISION

Section 113. Reference to High Court

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

[1][Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

Explanation.-In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.]

[1] Added by Act 24 of 1951, s. 2 (w.e.f. 1-4-1951).

Section 114. Review

Subject as aforesaid, any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Section 115. Revision

[1][(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[2][Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[3][(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[4][(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation.-In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]

State Amendments

Orrisa

Amendment of section 115.-In the Code of Civil Procedure, 1908 (5 of 1908) for section 115, the following section shall be substituted, namely:-

115. Revision.-The High Court, in cases arising out of original suits or other proceedings of the value exceeding one lakh rupees, and the District Court, in any other case including a case arising out of an original suit or other proceedings instituted before the commencement of the Code of Civil Procedure (Orissa Amendment) Act, 1991, may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have failed to exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit:

Provided that in respect of cases arising out of original suits, or other proceedings of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section:

Provided further that the High Court or the District Court shall not, under this section, vary or reverse any order, including an order deciding an issue, made in the course of a suit or other proceedings, except where-

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceedings; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Explanation-In this section, the expression " any case which has been decided" includes any order deciding an issue in the course of a suit or other proceeding.". 3. Saving.-The amendment made by this Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, or any jurisdiction already exercised, and any proceeding instituted or commenced in the High Court under section 115 of the Code of Civil Procedure, 1908 (5 of 1908) prior to the commencement of this Act shall, notwithstanding such amendment, continue to be heard and decided by such Court.

[Vide the Orissa Act 26 of 1991, s. 2]

Amendment of section 115.-In the Code of Civil Procedure, 1908 (5 of 1908), for section 115, the following section shall be substituted, namely:-

115. Revision.-(1) The High Court, in cases arising out of original suits or other proceedings of the value exceeding five lakhs rupees and the District Court, in any other cases, including a case arising out of an original suit or other proceedings instituted before the commencement of the Code of Civil Procedure (Orissa Amendment) Act, 2010, may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit:

Provided that in respect of cases arising out of original suits or other proceedings of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section.

(2) The High Court or the District Court, as the case may be, shall not under this section, vary or reverse any order, including an order deciding an issue, made in the course of a suit or other proceedings, except where the order, if it had been made in favor of the party applying for revision, would have finally disposed of the suit or other proceedings.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court or District Court, as the case may be.

Explanation-In this section, the expression, "any case which has been decided" includes any order deciding an issue in the course of a suit or other proceeding.".

[Vide the Orissa Act 14 of 2010, s. 2]

Uttar Pradesh

Amendment of section 115 of Act V of 1908.-In section 115 of the said Code-

(i) for the words "High Court", wherever occurring, the words "High Court or District Court" shall be substituted; and

(ii) the following proviso thereto shall be inserted at the end, namely:--

"Provide that nothing in this section shall be construed to empower the District Court to call for the record of any case arising out of an original suit of the value of twenty thousand rupees or above,".

[Vide Uttar Pradesh Act 14 of 1970, s. 3]

Uttar Pradesh

Substitution of new section for section 115 of 5 of 1908.- For section 115 of the Code of Civil

Procedure, 1908, as amended in its application to Uttar Pradesh (hereinafter in this Chapter referred to as the said Code), the following section shall be substituted namely :-

"115. Revision.-The High Court in cases arising out of original suits of the value of rupees twenty thousand and above including such suits instituted before the 20th day of September, 1972, and the District Court in any other case, including a case arising out of an original suit instituted before the 20th day of September, 1972, may call for the record of any case which has been decided by any court subordinate to such High Court or District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate court appears;

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit;

Provided that in respect of cases decided before the 20th day of September, 1972, and also all cases arising out of original suits of any valuation decided by the District Court, the High Court alone shall be competent to make a order under this section."

[Vide Uttar Pradesh Act 19 of 1973, s. 2]

Amendment of section 115 of Act V of 1908.- In section 115 of the Code of Civil Procedure, 1908 as amended in its application to Uttar Pradesh, hereinafter referred to as the said Code :-

(i) for the words "the High Court or District Court", where they first occur, the words "the High Court in cases arising out of original suits of the values of twenty thousand rupees and above, and the District Court in any other case" shall be substituted and after the words "High Court or District Court" where they occur the second time, the commas and words, "as the case may be", shall be inserted;

(ii) the proviso shall be omitted.

[Vide Uttar Pradesh Act 37 of 1972, s. 6]

Uttar Pradesh

Substitution of section 115.- For section 115 of the said Code, the following section shall be substituted, namely :-

"115. Revision.-- The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before August 1, 1978, and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any court subordinate to such High Court or District Court as the case may be, and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised a jurisdiction not vested in it by law ; or

(b) to have failed to exercise a jurisdiction so vested ; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity ;

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit ;

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section ;

Provided further that the High Court or the District Court shall no under his section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding, except where, -

(i)the order, if so varied or reversed, would finally dispose of the suit or other proceeding ; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Explanation - In this section, the expression 'any case which has been decided' includes any order deciding an issue in the course of a suit of other Proceeding." [Vide Uttar Pradesh Act 31 of 1978, s. 3]

Uttar Pradesh

Amendment of section 115 of Act no. 5 of 1908.-In section 115 of the Code of Civil Procedure, 1908, hereinafter int his Chapter referred to as the said Code,--

(a) for the words "of the value of the twenty thousand rupees and above including such

suits or other proceedings instituted before August 1, 1978" the following words shall be substituted, namely -

"of the value exceeding one lakh rupees or such higher amount not exceeding five lakh rupees as the High Court may from time to time fix, by notification published in the official Gazette including such suits or other proceedings instituted before the date of commencement of the Uttar Pradesh Civil Laws (Amendment) Act, 1991, or as the case may be, the date of commencement of such notification." ;

(b) "Provided also that where a proceeding of the nature in which the District Court may call | after the second proviso, the following proviso shall be inserted, namely ;

for the record and pass orders under this section was pending immediately before the relevant date of commencement referred to above, in the High Court, such court shall proceed to dispose of the same."

[Vide Uttar Pradesh Act 17 of 1991, s. 7]

Substitution of section 115 of Act no. 5 of 1908.- For section 115 of the Code of Civil Procedure, 1908, hereinafter referred to as the principal Act, the following section shall be substituted and be deemed to have been substituted with effect from July 1, 2002, namely:-

"115. Revision (1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has -

(a) exercised a jurisdiction not vested in it by law ; or

(b) failed to exercise a jurisdiction so vested ; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) | A revision application under sub-section (1), when filed in the High Court, shall

contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.

(3) The superior court shall not, under this section, very or reverse any order made

except where, -

(i) the order, if it had been made in favour of the party applying for

revision, would have finally disposed of the suit or other proceeding

; or

(ii) cause irreparable injury to the party against whom it is made. | the order, if allowed to stand, would occasion a failure of justice or

(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

Explanation -I In this section,-

(i) | the expression 'superior court' means -

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees ;

(b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees ;

(ii) | the expression 'order' includes an order deciding an issue in any

original suit or other proceedings.

Explanation -II. The provisions of this section shall also be applicable to

orders passed, before or after the commencement of this section, in original suits

or other proceedings instituted before such commencement."

[Vide Uttar Pradesh Act 14 of 2003, s. 2]

[1] S. 115 re-numbered as sub-section (1) by Act 104 of 1976, s. 43 (w.e.f. 1-2-1977).

[2] Subs. by Act 46 of 1999, s.12, for "proviso" (w.e.f. 1-7-2002).

[3] Ins. by Act 104 of 1976, s. 43 (w.e.f. 1-2-1977).
[4] Ins. by Act 46 of 1999, s.12 (w.e.f. 1-7-2002).

PART IX SPECIAL PROVISIONS RELATING TO THE HIGH COURTS NOT BEING THE COURT OF A JUDICIAL COMMISSIONER

Section 116. Part to apply only to certain High Courts

This Part applies only to High Courts [1][not being the court of a Judicial Commissioner.]

[1] Subs. by the Adaptation of Laws (No. 2) Order, 1956 for "For Part A States and Part B States".

Section 117. Application of Code to High Courts

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

Section 118. Execution of decree before ascertainment of costs

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

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Section 119. Unauthorized persons not to address Court

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

Section 120. Provisions not applicable to High Court in original civil jurisdiction

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

[1]* * * * *

[1] Sub-section (2) rep. by Act 3 of 1909, s. 127 and Sch. III.

PART X RULES

Section 121. Effect of rules in First Schedule

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

Section 122. Power of certain High Courts to make rules

[1][High Courts [2][not being the Court of a Judicial Commissioner]] [3]*** may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subjects to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

[1] Subs. by the A.O. 1950, for "Courts which are High Courts for the purposes of the Government of India Act, 1935".
[2] Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "for Part A States and Part B States". The words in italics were ins. by Act 2 of 1951, s. 15 (w.e.f. 1-4-1951).
[3] The words "and the Chief Court of Lower Burma" rep. by Act 11 of 1923, s. 3 and Sch. II.

Section 123. Constitution of Rules Committees in certain States

(1) A Committee, to be called the Rule Committee, shall be constituted at [1][the town which is the usual place of sitting of each of the High Courts [2]*** referred to in section 122.]

(2) Each such Committee shall consist of the following persons, namely:-

(a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or [3]*** a Divisional Judge for three years,

[4][(b) two legal practitioners enrolled in that Court,]

[5][(c) a Judge of a Civil Court subordinate to the High Court, [6]***

[7]* * * * *

(3) The members of each Committee shall be appointed by the [8][High Court], which shall also nominate one of their

number to be President:

[9]* * * * *

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the [8][High Court] in this behalf; and whenever any member retires, resigns, dies or ceases reside in the State in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said [8][High Court] may appoint another person to be a member in his stead.

(5) There shall be a secretary to each such Committee, who shall be appointed by the [8][High Court] and shall receive such remuneration as may be provided in this behalf [10][by the State Government.]

State Amendments

Assam.-

For clause (a) of sub-section (2) of section 123 the following shall be substituted- "(a) three Judges of the High Court established at the town at which such Committee is constituted, provided that the Chief Justice may appoint only two Judges of the High Court on the Committee if the number of Judges of the High Court does not exceed three."

[Vide Assam Act 8 of 1953, sec. 2.]

Tamil Nadu

Amendment of section 123, Central Act V of 1908.-In section (2) of section 123 of the Code of Civil Procedure, 1908 (Central Act V of 1908),-

(a) in clause (b), for the words "two legal practitioners", the words "three legal practitioners" shall be substituted.

(b) in clause (d), the word "Madras" shall be omitted. [Vide Tamil Nadu Act 15 of 1970, s. 2]

[1] Subs. by Act 13 of 1916, s. 2 and the Schedule, for "each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon".
[2] The words "and of the Chief Court" omitted by the Act 11 of 1923, s. 3 and Sch. II These words were again ins. by Act 32 of 1925, and subsequently omitted by the A.O. 1948.
[3] The brackets and words "(in Burma)" rep. by Act 11 of 1923, s. 3 and Sch. II.
[4] Subs. by Act 2 of 1951, s. 16, for clauses (b) and (c).
[5] Clauses (d) and (e) re-lettered as clauses (c) and (d) respectively by s. 16, ibid. (w.e.f. 1-4-1951).
[6] The word "and" omitted by Act 38 of 1978, s. 3 and Sch. II (w.e.f. 26-11-1978).
[7] Clause (d) omitted by s. 3, ibid. and Sch. II (w.e.f. 26-11-1978).
[8] Subs. by Act 104 of 1976, s. 44, for "Chief Justice or Chief Judge" (w.e.f. 1-2-1977).
[9] Proviso omitted by s. 44, ibid. (w.e.f. 1-2-1977).
[10] Subs. by the A.O. 1937, for "by the G.G. in C. or by the L.G., as the case may be".

Section 124. Committee to report to High Court

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

Section 125. Power of other High Courts to make rules

High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions [1][as [2][the State Government] may determine:]

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

[1] Subs. by Act 38 of 1920, s. 2 and Sch. I, Pt. I, for "as the G.G. in C. may determine".
[2] Subs. by the A.O.1937, for "in the case of the Court of the Judicial Commissioner of Coorg, the G.G. in C., and, in other cases the L.G.".

Section 126. Rules to be subject to approval

[1][Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the State in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any State, to the previous approval of [2][Central Government.]]

[1] Subs. by the A.O.1937, for section 126.
[2] Subs. by the A.O. 1950, for "Governor General".

Section 127. Publication of rules

Rules so made and [1][approved] shall be published in the [2][Official Gazette], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

[1] Subs. by Act 24 of 1917, s. 2 and Sch. I, for "sanctioned".
[2] Subs. by the A.O. 1937, for "Gazette of India or in the local Official Gazette, as the case may be". Strictly the substitution would read "Official Gazette or in the Official Gazette, as the case may be, but the latter words have been omitted as being redundant".

Section 128. Matters for which rules may provide

(1) Such rules shall be not inconsistent with the provisions in the body of this code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:-

(a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

(b) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;

(c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;

(d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;

(e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;

(f) summary procedure-

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising-

on a contract express or implied; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only;

or on a trust; or

(ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forefeiture for non-payment of rent, or against persons claiming under such tenant;

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

Section 129. Power of High Courts to make rules as to their original Civil procedure

Notwithstanding anything in this Code, any High Court [1][not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent [2][or order] [3][or other law] establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

[1] Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "for a Part A State or a Part B State".
[2] Ins. by the A.O. 1950.
[3] Ins. by Act 2 of 1951, s. 17 (w.e.f. 1-4-1951).

Section 130. Powers of other High Courts to make rules as to matters other than procedure

[1][A High Court [2][not being a High Court to which section 129 applies] may, with the previous approval of the State Government, make with respect to any matter other than procedure any rule which a High Court [3][for a [4]*** State] might under [5][article 227 of the Constitution] make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency town.]

[1] Subs. by the A.O. 1937, for section 130.
[2] Subs. by the A.O. 1950, for "not constituted by His Majesty by Letters Patent".
[3] Subs., ibid., for "so constituted".
[4] The word and letter "Part A" omitted by the Adaptation of Laws (No. 2) Order, 1956.
[5] Subs. by the A.O. 1950, for "section 224 of the Government of India Act, 1935".

Section 131. Publication of rules

Rules made in accordance with section 129 or section 130 shall be published in the [1][Official Gazette] and shall from the date of publication or from such other date as may be specified have the force of law.

[1] Subs. by the A.O.1937, for "Gazette of India or in the Local Official Gazette, as the case may be". Strictly the substitution would read "Official Gazette or in the Official Gazette, as the case may be," but the latter words have been omitted as being redundant.

PART XI MISCELLANEOUS

Section 132. Exemption of certain women from personal appearance

(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

Section 133. Exemption of other persons

[1][(1) The following persons shall be entitled to exemption from personal appearance in Court, namely:-

(i) the President of India;

(ii) the Vice-President of India;

(iii) the Speaker of the House of the People;

(iv) the Ministers of the Union;

(v) the Judges of the Supreme Court;

(vi) the Governors of States and the administrators of Union territories;

(vii) the Speakers of the State Legislative Assemblies;

(viii) the Chairman of the State Legislative Councils;

(ix) the Ministers of States;

(x) the Judges of the High Courts; and

(xi) the persons to whom section 87B applies.] [2]* * * * * (3) Where any person [3]*** claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

[1] Subs. by Act 66 of 1956, s. 12, for sub-section (1) (w.e.f. 1-1-1957).

[2] Sub-section (2) omitted by Act 66 of 1956, s. 12 (w.e.f. 1-1-1957).

[3] The words "so exempted" omitted by s. 12, ibid.

Section 134. Arrest other than in execution of decree

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

Section 135. Exemption from arrest under civil process

(1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

Section 135A. Exemption of members of legislative bodies from arrest and detention under civil process

[1][[2][(1) No person shall be liable to arrest or detention in prison under civil process-

(a) if he is a member of-

(i) either House of Parliament, or

(ii) the Legislative Assembly or Legislative Council of a State, or

(iii) a Legislative Assembly of a Union territory, during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a member of any committee of-

(i) either House of Parliament, or

(ii) the Legislative Assembly of a State or Union territory, or

(iii) the Legislative Council of a State, during the continuance of any meeting of such committee; (c) if he is a member of-

(i) either House of Parliament, or (ii) a Legislative Assembly or Legislative Council of a State having both such Houses, during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or, Houses of the State Legislature, as the case may be, and during the forty days before and after such meeting, sitting or conference.]

(2) A person released from detention under sub-section (1) shall, subject to the provisions, of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).]

[1] Ins. by Act 23 of 1925, s. 3.

[2] Subs. by Act 104 of 1976, s. 45, for sub-section (1) (w.e.f. 1-2-1977).

Section 136. Procedure where person to be arrested or property to be attached is outside district

(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest of make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the later Court, or unless he furnishes sufficient security for his appearance before the later Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or movable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, [1]*** the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras [2][or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

[1] The words or "of the Chief Court of Lower Burma", omitted by the A.O. 1937.

[2] Subs. by the A.O. 1937, for "Bombay or Rangoon".

Section 137. Language of subordinate Courts

(1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the State Government otherwise directs.

(2) The State Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Court requires or allows anything other that the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

State Amendment

Rajasthan

Amendment of section 137, Central Act V of 1908.-In section 137 of the Code of Civil Procedure, 1908 (Central Act V of 1908), in its application to the State of Rajasthan, for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) Wherever this Code requires or allows anything other than the recording of evidence to be done in writing in any such

court, such writing shall be in Hindi in Devnagri Script with the interna-tional form of Indian numerals :

Provided that the court may in its discretion accept such writing in English on the undertaking of the party filing such writing, to file a Hindi translation of the same, within such time as may be granted by the court and the opposite party shall have a right to have a copy of such writing in Hindi." [Vide Rajasthan Act 7 of 1983, s. 2]

Section 138. Power of High Court to require evidence to be recorded in English

[1][(1) The[2][High Court] may, by notification in the Official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

[1] For s. 138, as applicable to Assam, see the Civil Procedure (Assam Amendment) Act 1941, (Assam 1 of 1941), s. 2.

[2] Subs. by Act 4 of 1914, s. 2 and the Schedule, Pt. I, for "L.G.".

Section 139. Oath on affidavit by whom to be administered

In the case of any affidavit under this Code-

(a) any Court or Magistrate, or

[1][(aa) any notary appointed under the Notaries Act, 1952 (53 of 1952); or]

(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

State Amendment

Uttar Pradesh

Amendment of section 139 of Act no. 5 of 1908.- In section 139 of the Code of Civil Procedure, 1908, for clauses (b) and (c), the following shall be substituted and be deemed always to have been substituted, namely :-

"(b) any person appointed in this behalf by a High Court or by a District Court ; or

(c) any person appointed in this behalf by such other Court as the State Government may, by

general or special order, empower in this behalf" ;

[Vide Uttar Pradesh Act 11 of 1981, s. 2]

[1] Ins. by Act 104 of 1976, s. 46 (w.e.f. 1-2-1977).

Section 140. Assessors in causes of salvage, etc

(1) In any admiralty or vice-admiralty cause of salvage to wage or collision the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

Section 141. Miscellaneous proceedings

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

[1][Explanation.-In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.]

[1] Ins. by s. 47, ibid. (w.e.f. 1-2-1977).

Section 142. Orders and notices to be in writing

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

Section 143. Postage

Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the State Government [1]*** may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

[1] The words "with the previous sanction of the G.G, in C." omitted by Act 38 of 1920, s. 2 and Sch. I, Pt. I

Section 144. Application for restitution

(1) Where and in so far as a decree [1][or an order] is [2][varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [1][or order] or [3][such part thereof as has been varied, reversed, set aside or modified]; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly [4][consequential on such variation, reversal, setting aside or modification of the decree or order].

[5][Explanation.-For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,-

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

[1] Ins. by Act 66 of 1956, s. 13 (w.e.f. 1-1-1957).
[2] Subs. by Act 104 of 1976, s. 48, for "varied or reversed, the Court of first instance" (w.e.f. 1-2-1977).
[3] Subs. by s. 48, ibid., for "such part thereof as has been varied or reversed" (w.e.f. 1-2-1977).
[4] Subs. by s. 48, ibid., for "consequential on such variation or reversal" (w.e.f. 1-2-1977).
[5] Ins. by Act 104 of 1976, s. 48 (w.e.f. 1-2-1977).

Section 145. Enforcement of liability of surety

Where any person [1][has furnished security or given a guarantee]-

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

[2][the decree or order may be executed in the manner therein provided for the execution of decrees, namely:-

(i) if he has rendered himself personally liable, against him to that extent;

(ii) if he has furnished any property as security, by sale of such property to the extent of the security;

(iii) if the case falls both under clauses (i) and (ii) then to the extent specified in those clauses,

and such person shall, be deemed to be a party within the meaning of section 47:]

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

[1] Subs. by s. 49, ibid., for "has become liable as surety" (w.e.f. 1-2-1977).
[2] Subs. by s. 49, ibid., for certain words (w.e.f. 1-2-1977).

Section 146. Proceedings by or against representatives

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

Section 147. Consent or agreement by persons under disability

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

Section 148. Enlargement of time

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [1][not exceeding thirty days in total,] even though the period originally fixed or granted may have expired.

[1] Ins. by Act 46 of 1999, s. 13 (w.e.f. 1-7-2002).

Section 148A. Right to lodge a caveat

[1][(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by [2][speed post with registration and proof of delivery], on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

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

[1] Ins. by Act 104 of 1976, s. 50 (w.e.f. 1-5-1977).

[2] Ins. by Act 37 of 2025, s. 3 and Sch. II, for "registered post, acknowledgement due" (w.e.f. 20-12-25).

Section 149. Power to make up deficiency of court-fees

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

Section 150. Transfer of business

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

Section 151. Saving of inherent powers of Court

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

Section 152. Amendment of judgments, decrees or orders

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

Section 153. General power to amend

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

Section 153A. Power to amend decree or order where appeal is summarily dismissed

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

[1] Ins. by Act 104 of 1976, s. 51 (w.e.f. 1-2-1977).

Section 153B. Place of trial to be deemed to be open Court

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

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

Section 154. Saving of present right of appeal

[Saving of present right of appeal.] Rep. by the Repealing and Amending Act, 1952 (48 of 1952), s. 2 and Sch. I.

Section 155. Amendment of certain Acts

[Amendment of certain Acts.] Rep. by s. 2 and Sch. I, ibid.

Section 156. Repeals

[Repeals.] Rep. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 3 and Sch. II.

Section 157. Continuance of orders under repealed enactments

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

Section 158. Reference to Code of Civil Procedure and other repealed enactments

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

THE FIRST SCHEDULE

ORDER I Parties to Suits

Order I Rule 1. Who may be joined as plaintiffs

[1][All persons may be joined in one suit as plaintiffs where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.]

[1] Subs. by Act 104 of 1976, s. 52, for rules 1 and 3 respectively (w.e.f. 1-2-1977).

Order I Rule 2. Power of Court to order separate trial

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

Order I Rule 3. Who may be joined as defendants

[1][All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.]

[1] Subs. by Act 104 of 1976, s. 52, for rules 1 and 3 respectively (w.e.f. 1-2-1977).

Order I Rule 3A. Power to order separate trials where joinder of defendants may embarrass or delay trial

[1][Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

[1] Ins. by s. 52, ibid. (w.e.f. 1-2-1977).

Order I Rule 4. Court may give judgment for or against one or more of joint parties

Judgment may be given without any amendment -

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Order I Rule 5. Defendant need not be interested in all the relief claimed

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

Order I Rule 6. Joinder of parties liable on same contract

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

Order I Rule 7. When plaintiff in doubt from whom redress is to be sought

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

Order I Rule 8. One person may sue or defend on behalf of all in same interest

[1][(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

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

[1] Subs. by Act 104 of 1976, s. 52, for rule 8 (w.e.f. 1-2-1977).

Order I Rule 8A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings

[1][While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.]

[1] Ins. by s. 52, ibid. (w.e.f. 1-2-1977).

Order I Rule 9. Misjoinder and non-joinder

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

[1][Provided that nothing in this rule shall apply to non-joinder of a necessary party.]

[1] The proviso added by, ibid., s. 52 (w.e.f. 1-2-1977).

Order I Rule 10. Suit in name of wrong plaintiff

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.-The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the [1][Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

[1] See now the Limitation Act, 1963 (36 of 1963), s. 21.

Order I Rule 10A. Power of Court to request any pleader to address it

[1][The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.]

[1] Ins. by Act 104 of 1976, s. 52 (w.e.f. 1-2-1977).

Order I Rule 11. Conduct of suit

The Court may give the conduct of [1][a suit] to such persons as it deems proper.

[1] Subs. by s. 52, ibid., for "the suit" (w.e.f. 1-2-1977).

Order I Rule 12. Appearance of one of several plaintiffs or defendants for others

(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

Order I Rule 13. Objections as to non-joinder or misjoinder

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

ORDER II Frame of suit

Order II Rule 1. Frame of suit

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

Order II Rule 2. Suit to include the whole claim

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.-Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any

portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration

A lets a house to B at a yearly of rent Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Order II Rule 3. Joinder of causes of action

(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Order II Rule 4. Only certain claims to be joined for recovery of immovable property

No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except-

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Order II Rule 5. Claims by or against executor, administrator or heir

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

Order II Rule 6. Power of Court to order separate trials

[1][Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

[1] Subs. by Act 104 of 1976, s. 53, for rule 6 (w.e.f. 1-2-1977).

Order II Rule 7. Objections as to misjoinder

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

State Amendment

Uttar Pradesh

Amendment of the First Schedule Order II.- In the First Schedule to the principal Act (hereinafter in this Chapter referred to as the First Schedule), in Order II, in rule 2 -

(a) the existing explanation shall be numbered as Explanation I, and after Explanation I, as so numbered the following explanation II, shall be inserted, namely :-

"Explanation II- For the purpose of this rule a claim for ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action.";

(b) for the illustration, the following illustration shall be substituted, namely :-

"Illustration- A lets immovable property to B at a yearly rent. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid, and the tenancy is determined before A sues Bin 1908, only for the rent due for 1906. A may afterwards sue B

for ejectment but not for the rent due for 1905 or 1907."

[Vide Uttar Pradesh Act 57 of 1976, s. 4]

ORDER III Recognized Agents and Pleaders

Order III Rule 1. Appearances, etc., may be in person, by recognized agent or by pleader

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader [1][appearing, applying or acting, as the case may be,] on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

[1] Subs. by Act 22 of 1926, s. 2, for "duly appointed to act".

Order III Rule 2. Recognized agents

The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

Order III Rule 3. Service of process on recognized agent

(1) Processes served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent.

Order III Rule 4. Appointment of pleader

[1][(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be [2][filed in Court and shall, for the purposes of sub-rule (1), be] deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

[3][Explanation.-For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,-

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.]

[4][(3) Nothing in sub-rule (2) shall be construed-

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).]

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.]

[1] Subs. by s. 2, ibid., for rule 4.
[2] Subs. by Act 104 of 1976, s. 54, for certain words (w.e.f. 1-2-1977).
[3] Ins. by s. 54, ibid. (w.e.f. 1-2-1977).
[4] Subs. by s. 54, ibid., for sub-rule (3) (w.e.f. 1-2-1977).

Order III Rule 5. Service of process on pleader

[1][Any process served on the pleader who has been duly appointed to act in Court for any party] or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

[1] Subs. by Act 104 of 1976, s. 54, for certain words (w.e.f. 1-2-1977).

Order III Rule 6. Agent to accept service

(1) Besides the recognised agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

(2) Appointment to be in writing and to be filed in Court.-Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

[1][(3) The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.]

[1] Ins. by s. 54, ibid. (w.e.f. 1-2-1977).

ORDER IV Institution of suits

Order IV Rule 1. Suit to be commenced by plaint

(1) Every suit shall be instituted by presenting [1][plaint in duplicate to the Court] or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

[2][(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).]

[1] Subs. by Act 46 of 1999, s. 14, for certain words (w.e.f. 1-7-2002).
[2] Ins. by s. 14, ibid. (w.e.f. 1-7-2002).

Order IV Rule 2. Register of suits

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

State Amendment

Uttar Pradesh

Insertion of Order IV-A.-In the First Schedule, after Order IV, the following Order shall be inserted, namely :-

"ORDER IV-A

CONSOLIDATION OF CASES

1. Consolidation of suits and proceedings- When two or more suits or proceedings are pending in the same court, and the court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings. "

[Vide Uttar Pradesh Act 57 of 1976, s. 5]

Amendment of Order VI.-In the First Schedule, in Order VI, in rule 15, in sub-rule (1), for the words "at the foot", the following words shall be substituted, namely :-

"on oath administered by an officer empowered under section 139 of the Code,".

[Vide Uttar Pradesh Act 57 of 1976, s. 6]

———

ORDER V Issue and service of summons

Issue of Summons

Order V Rule 1. Summons

[1][(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

[2][Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing but which shall not be later than ninety days from the date of service of summons.]

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

State Amendment

Jammu and Kashmir and Ladakh (UTs).-

In Order V, in Rule 1, for the second proviso, substitute the following proviso, namely;-

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Subs. by Act 22 of 2002, s. 6, for sub-rule (1) (w.e.f. 1-7-2002).

[2] Subs. by Act 4 of 2016, s. 16 and Sch., for the Second Proviso, Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Order V Rule 2. Copy of plaint annexed to summons

[1][Every summon shall be accompanied by a copy of the plaint.]

[1] Subs. by Act 46 of 1999, s. 15, for rule (2) (w.e.f. 1-7-2002).

Order V Rule 3. Court may order defendant or plaintiff to appear in person

(1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

Order V Rule 4. No party to be ordered to appear in person unless resident within certain limits

No party shall be ordered to appear in person unless he resides-

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

Order V Rule 5. Summons to be either to settle issues or for final disposal

The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

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

Order V Rule 6. Fixing day for appearance of defendant

The day [1][under sub-rule (1) of rule 1] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

[1] Subs. by s. 15, ibid., for the "appearance of the defendant" (w.e.f. 1-7-2002).

Order V Rule 7. Summons to order defendant to produce documents relied on by him

The summons to appear and answer shall order the defendant to produce [1][all documents or copies thereof specified in rule l A of Order VIII] in his possession or power upon which he intends to rely in support of his case.

[1] Subs. by s. 15, ibid., for all documents (w.e.f. 1-7-2002).

Order V Rule 8. On issue of summons for final disposal, defendant to be directed to produce his witnesses

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

Order V Rule 9. Delivery of summons by Court

[1][(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by [2][speed post with registration and proof of delivery addressed to the defendant or his agent empowered to accept the service] or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) [3]***, the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by [4][speed post with registration and proof of delivery, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the proof of delivery] having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

[1] Subs. by Act 22 of 2002, s. 6, for rule 9 (w.e.f. 1-7-2002).
[2] Subs. by Act 37 of 2025, s. 3 and Sch. II, for certain words (w.e.f. 20-12-2025).
[3] Certain words omitted by Act 37 of 2025, s. 3 and Sch. II (w.e.f. 20-12-2025).
[4] Subs. by s. 3 and Sch. II, ibid., for certain words (w.e.f. 20-12-2025).

Order V Rule 9A. Summons given to the plaintiff for service

(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.]

Order V Rule 10. Mode of service

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

Order V Rule 11. Service on several defendants

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

Order V Rule 12. Service to be on defendant in person when practicable, or on his agent

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

Order V Rule 13. Service on agent by whom defendant carries on business

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

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Order V Rule 14. Service on agent in charge in suits for immovable property

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

Order V Rule 15. Where service may be on an adult member of defendant's family

[1][Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.-A servant is not a member of the family within the meaning of this rule.]

[1] Subs. by Act 104 of 1976, s. 55, for rule 15 (w.e.f. 1-2-1977).

Order V Rule 16. Person served to sign acknowledgment

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

Order V Rule 17. Procedure when defendant refuses to accept service, or cannot be found

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, [1][who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time], and there is no agent empowered to accept service of the

summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

[1] Ins. by s. 55, ibid. (w.e.f. 1-2-1977).

Order V Rule 18. Endorsement of time and manner of service

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

Order V Rule 19. Examination of serving officer

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

Order V Rule 19A. Simultaneous issue of summons for service by post in addition to personal service

[Simultaneous issue of summons for service by post in addition to personal service.] Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 15 (w.e.f. 1-7-2002).

Order V Rule 20. Substituted service

(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

[1][(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

(2) Effect of substituted service.-Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed.-Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

[1] Ins. by Act 104 of 1976, s. 55 (w.e.f. 1-2-1977).

Order V Rule 20A. Service of summons by post

[1][Service of summons by post.] Rep. by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 55 (w.e.f. 1-2-1977)].

[1] Ins. by Act 66 of 1956, s. 14 (w.e.f. 1-1-1957).

Order V Rule 21. Service of summons where defendant resides within jurisdiction of another Court

A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers [1][or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

[1] Subs. by Act 46 of 1999, s. 15, for certain words (w.e.f. 1-7-2002).

Order V Rule 22. Service within presidency-towns of summons issued by Courts outside

Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras [1][and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

[1] Subs. by the A.O. 1937, for "Bombay and Rangoon".

Order V Rule 23. Duty of Court to which summons is sent

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

Order V Rule 24. Service on defendant in prison

Where the defendant is confined in a prison, the summons shall be delivered or sent [1][or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to the officer in charge of the prison for service on the defendant.

[1] Subs. by Act 46 of 1999, s. 15, for certain words (w.e.f. 1-7-2002).

Order V Rule 25. Service where defendant resides out of India and has no agent

Where the defendant resides out of [1][India] and has no agent in [1][India] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him [2][or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court], if there is postal communication between such place and the place where the Court is situate:

[3][Provided that where any such defendant [4][resides in Bangladesh or Pakistan], the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer [5][in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)] or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

[1] Subs. by Act 2 of 1951, s. 3, for "the State".
[2] Subs. by Act 46 of 1999, s. 15, for certain words (w.e.f. 1-7-2002).
[3] Ins. by Act 19 of 1951, s. 2.
[4] Subs. by Act 104 of 1976, s. 53, for "resides in Pakistan," (w.e.f. 1-2-1977).
[5] Subs. by s. 55, ibid., for certain words (w.e.f. 1-2-1977).

Order V Rule 26. Service in foreign territory through Political Agent or Court

[1][Where-

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

[1] Subs. by s. 55, ibid., for rule 26 (w.e.f. 1-2-1977).

Order V Rule 26A. Summonses to be sent to officers to foreign countries

Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of

India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.]

Order V Rule 27. Service on civil public officer or on servant of railway company or local authority

Where the defendant is a public officer (not belonging to the [1][the Indians] military [2][naval or air] forces [3]***), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

[1] Subs. by the A.O. 1950, for "His Majesty's".
[2] Subs. by Act 10 of 1927, s. 2 and Sch. I, for "or naval".
[3] The words "or His Majesty's Indian Marine Service" omitted by Act 35 of 1934, s. 2 and Sch. I.

Order V Rule 28. Service on soldiers, sailors or airmen

Where the defendant is a soldier, [1][sailor] [2][or airman], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

[1] Ins. by s. 2 and Sch., ibid.
[2] Ins. by Act 10 of 1927, s. 2 and Sch. I.

Order V Rule 29. Duty of person to whom summons is delivered or sent for service

(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Order V Rule 30. Substitution of letter for summons

(1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI Pleadings generally

Order VI Rule 1. Pleading

"Pleading" shall mean plaint or written statement.

Order VI Rule 2. Pleading to state material facts and not evidence

[1][(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.]

[1] Subs. by Act 104 of 1976, s. 56, for rule 2 (w.e.f. 1-2-1977).

Order VI Rule 3. Forms of pleading

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

Order VI Rule 3A. Forms of pleading in Commercial Courts

[1][In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.]

[1] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Order VI Rule 4. Particulars to be given where necessary

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Order VI Rule 5. Further and better statement, or particulars

[Further and better statement, or particulars.] Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 16 (w.e.f. 1-7-2002).

Order VI Rule 6. Condition precedent

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

Order VI Rule 7. Departure

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

Order VI Rule 8. Denial of contract

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

Order VI Rule 9. Effect of document to be stated

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

Order VI Rule 10. Malice, knowledge, etc

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

Order VI Rule 11. Notice

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

Order VI Rule 12. Implied contract, or relation

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

Order VI Rule 13. Presumptions of law

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

Order VI Rule 14. Pleading to be signed

Every pleading shall be signed by the party and his pleader (if any):

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

Order VI Rule 14A. Address for service of notice

[1][(1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(5) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.]

[1] Ins. by Act 104 of 1976, s. 56 (w.e.f. 1-2-1977).

Order VI Rule 15. Verification of pleadings

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

[1][(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

[1] Ins. by Act 46 of 1999, s. 16 (w.e.f. 1-7-2002).

Order VI Rule 15A. Verification of pleadings in a commercial dispute

[1][(1) Notwithstanding anything contained in rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.]

[1] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Order VI Rule 16. Striking out pleadings

[1][The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, of

(b) which may tend to prejudice, embarrass or delay the fair trail of the suit, or

(c) which is otherwise an abuse of the process of the Court.]

[1] Subs. by Act 104 of 1976, s. 56, for rule 16 (w.e.f. 1-2-1977).

Order VI Rule 17. Amendment of pleadings

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

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

[1] Subs. by Act 22 of 2002, s. 7, for rules 17 and 18 (w.e.f. 1-7-2002).

Order VI Rule 18. Failure to amend after Order

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

State Amendment

Uttar Pradesh

Amendment of Order VI of the First Schedule.- In the First Schedule to the said Code, in Order VI, in rule 15, in sub-rule (1), for words, "on oath administered by an officer empowered under section 137 of the Code,"

[Vide Uttar Pradesh Act 31 of 1978, s. 4]

ORDER VII Plaint

Order VII Rule 1. Particulars to be contained in plaint

The plaint shall contain the following particulars:-

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed, or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

Order VII Rule 2. In money suits

Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed :

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, [1][or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.]

[1] Subs. by Act 104 of 1976, s. 57, for certain words (w.e.f. 1-2-1977).

Order VII Rule 2A. Where interest is sought in the suit

[1][(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state-

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

(d) the total amount of interest claimed to the date of calculation; and

(e) the daily rate at which interest accrues after that date.]

State Amendment

Jammu and Kashmir and Ladakh (UTs)

In Order VII, after Rule, insert the following Rule, namely:-

2A. Where interest is sought in the suit.-(1) Where the plaintiff seeks interests, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state-

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

(d) the total amount of interest claimed to the date calculation; and

(e) the daily rate at which interest accrues after the date.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a Specified Value (w.e.f. 23-10-2015).

Order VII Rule 3. Where the subject-matter of the suit is immovable property

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

Order VII Rule 4. When plaintiff sues as representative

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

Order VII Rule 5. Defendant's interest and liability to be shown

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

Order VII Rule 6. Grounds of exemption from limitation law

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed:

[1][Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.]

[1] The proviso added by Act 104 of 1976, s. 57 (w.e.f. 1-2-1977).

Order VII Rule 7. Relief to be specifically stated

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

Order VII Rule 8. Relief founded on separate grounds

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

Order VII Rule 9. Procedure on admitting plaint

[1][Where the Court orders that the summons be served on the defendants in

the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.]

[1] Subs. by Act 22 of 2002, s. 8, for rule 9 (w.e.f. 1-7-2002).

Order VII Rule 10. Return of plaint

[1](1) [2][Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[3][Explanation.-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) Procedure on returning plaint.-On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

[1] This rule has been applied to suits for the recovery of rent under the Chota Nagpur Tenancy Act, 1908 (Ben. 6 of 1908) s. 265.

[2] Subs. by Act 104 of 1976, s. 57, for certain words (w.e.f. 1-2-1977).

[3] Ins. by Act 104 of 1976, s. 57. (w.e.f. 1-2-1977).

Order VII Rule 10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return

[1][(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.]

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

[1] Ins. by Act 104 of 1976, s. 57. (w.e.f. 1-2-1977).

Order VII Rule 10B. Power of appellate Court to transfer suit to the proper Court

(1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the Court in which the suit should have

been instituted, (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

(2) The direction made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.]

Order VII Rule 11. Rejection of plaint

The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[1][(e) where it is not filed in duplicate;]

[2][(f) where the plaintiff fails to comply with the provisions of rule 9:]

[3][Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

[1] Ins. by Act 46 of 1999, s. 17 (w.e.f. 1-7-2002).

[2] Subs. by Act 22 of 2002, s. 8, for sub-clauses (f) and (g) (w.e.f. 1-7-2002).

[3] Added by Act 104 of 1976, s. 57 (w.e.f. 1-2-1977).

Order VII Rule 12. Procedure on rejecting plaint

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

Order VII Rule 13. Where rejection of plaint does not preclude presentation of fresh plaint

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

Documents relied on in plaint

Order VII Rule 14. Production of document on which plaintiff sues or relies

[1][(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

[2][(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.]

[1] Subs. by Act 46 of 1999, s. 17, for rule 14 (w.e.f. 1-7-2002).

[2] Subs. by Act 22 of 2002, s. 8, for sub-rule (3) (w.e.f. 1-7-2002).

Order VII Rule 15. Statement in case of documents not in plaintiff's possession or powers

[Statement in case of documents not in plaintiff's possession or powers.] omitted by Act 46 of 1999, s. 17 (w.e.f. 1-7-2002).

Order VII Rule 16. Suits on lost negotiable instruments

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

Order VII Rule 17. Production of shop-book

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned.-The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Order VII Rule 18. Inadmissibility of document not produced when plaint filed

[Inadmissibility of document not produced when plaint filed.] omitted by Act 22 of 2002, s. 8 (w. e. f. 1-7-2002).

ORDER VIII Written statement, set-off and counter-claim

Order VIII Rule 1. Written Statement

[1][The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]

[2][Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]

State Amendments

Jammu and Kashmir and Ladakh (UTs). -

In Rule 1, for the proviso thereto, substitute the following proviso, namely,-

Provided that where the defendant fails to file the written statement with the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Subs. by Act 22 of 2002, s. 9, for rule 1 (w.e.f. 1-7-2002).

[2] Subs. by Act 4 of 2016, s. 16 and Sch., for the Proviso, Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Order VIII Rule 1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him

[1][(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

[2][(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall

not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.]

[1] Ins. by Act 46 of 1999, s.18 (w.e.f. 1-7-2002).

[2] Subs. by Act 22 of 2002, s. 9, for sub-rule (3) (w.e.f. 1-7-2002).

Order VIII Rule 2. New facts must be specially pleaded

The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

Order VIII Rule 3. Denial to be specific

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

Order VIII Rule 3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court

[1][(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.]

State Amendment

Jammu and Kashmir and Ladakh (UTs).

After Rue 3, insert the following Rule, namely,-

"3A. Denial by the defendant in suits.-(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the court he must state the reasons for doing so, and if he is able, give his own statement as to which court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Order VIII Rule 4. Evasive-denial

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

Order VIII Rule 5. Specific denial

[1][(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

[2][Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.]

[3][(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]

State Amendment

Jammu and Kashmir and Ladakh (UTs).- In Rule 5, in sub-rule (1) after first proviso thereto, insert the following proviso, namely:-

Provided further, that every allegation of fact in the plaint, if not denied in the manner provided under Rue 3-A of this order, shall be taken to be admitted except as against a person under disability.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Rule 5 renumbered as sub-rule 1 by Act 104 of 1976, s. 58 (w.e.f. 1-2-1977).

[2] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

[3] Ins. by s. 58, ibid. (w.e.f. 1-2-1977).

Order VIII Rule 6. Particulars of set-off to be given in written statement

(1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.

(2) Effect of set-off.-The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects, C pays Rs, 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C.

In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off. (d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite

pecuniary demands may be set-off.

(e) A sues B for compensation on account of trespass. B hold a promissory note for Rs. 1,000 from A and claims to set-off that

amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone. (g) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A. (h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt for Rs. 1,500 due in his

separate character. C may set-off the debt of Rs. 1,000.

Order VIII Rule 6A. Counter-claim by defendant

[1][(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

[1] Ins. by Act 104 of 1976, s. 58 (w.e.f. 1-2-1977).

Order VIII Rule 6B. Counter-claim to be stated

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

Order VIII Rule 6C. Exclusion of counter-claim

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

Order VIII Rule 6D. Effect of discontinuance of suit

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

Order VIII Rule 6E. Default of plaintiff to reply to counter-claim

If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

Order VIII Rule 6F. Relief to defendant where counter-claim succeeds

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

Order VIII Rule 6G. Rules relating to written statement to apply

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

Order VIII Rule 7. Defence or set-off founded upon separate grounds

Where the defendant relies upon several distinct grounds of defence or set-off [1][or counter-claim] founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

[1] Ins. by Act 104 of 1976, s. 58 (w.e.f. 1-2-1977).

Order VIII Rule 8. New ground of defence

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off [1][or counter-claim] may be raised by the defendant or plaintiff, as the case may be, in his written statement.

[1] Ins. by Act 104 of 1976, s. 58 (w.e.f. 1-2-1977).

Order VIII Rule 8A. Duty of defendant to produce documents upon which relief is claimed by him

[Duty of defendant to produce documents upon which relief is claimed by him.] omitted by Act 46 of 1999, s. 18 (w.e.f. 1-7-2002).

Order VIII Rule 9. Subsequent pleadings

[1][No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

[1] Subs. by Act 22 of 2002, s. 9, for rules 9 and 10 (w.e.f. 1-7-2002).

Order VIII Rule 10. Procedure when party fails to present written statement called for by Court

Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:]

[1][Provided that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.]

State Amendment

Jammu and Kashmir and Ladakh (UTs). In Rule 10, insert the following proviso, namely:-

Provided that no court shall make an order to extend the time provided under Rule 1 of this order for filing of the written statement.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

ORDER IX Appearance of parties and consequence of non-appearance

Order IX Rule 1. Parties to appear on day fixed in summons for defendant to appear and answer

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

Order IX Rule 2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs

[1][Where on the day so fixed it is found that summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.]

[1] Subs. by Act 22 of 2002, s. 10 for rule 2 (w.e.f. 1-7-2002).

Order IX Rule 3. Where neither party appears suit to be dismissed

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

Order IX Rule 4. Plaintiff may bring fresh suit or Court may restore suit to file

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for [1][such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

[1] Subs. by Act 104 of 1976 s. 59, for certain words (w.e.f. 1-2-1977).

Order IX Rule 5. Dismissal of suit where plaintiff after summons returned unserved, fails for [1][seven days] to apply for fresh summons

[2][(1) Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of [1][seven days] from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-

(a) he has failed after using his best endeavours to discover the residence of the defendant, who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.]

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

[1] Subs. by Act 46 of 1999, s. 19, for "one month" (w.e.f. 1-7-2002).

[2] Subs. by Act 24 of 1920 s. 2, for sub-rule (1).

Order IX Rule 6. Procedure when only plaintiff appears

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-

[1][(a) When summons duly served.-if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;]

(b) When summons not duly served.-if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.-if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

[1] Subs. by Act 104 of 1976, s. 59, for cl. (a) (w.e.f. 1-2-1977).

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

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

Order IX Rule 8. Procedure where defendant only appears

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Order IX Rule 9. Decree against plaintiff by default bars fresh suit

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Order IX Rule 10. Procedure in case of non-attendance of one or more of several plaintiff's

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

Order IX Rule 11. Procedure in case of non-attendance of one or more of several defendants

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

Order IX Rule 12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person

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

Setting aside Decrees ex parte

Order IX Rule 13. Setting aside decree ex parte against defendant

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[1][Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

[2][Explanation.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of an any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]

[1] The proviso added by Act 104 of 1976, s. 59 (w.e.f. 1-2-1977).

[2] Explanation ins. by s. 59, ibid. (w.e.f. 1-2-1977).

Order IX Rule 14. No decree to be set aside without notice to opposite party

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

ORDER X Examination of parties by the court

Order X Rule 1. Ascertainment whether allegations in pleadings are admitted or denied

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

Order X Rule 1A. Direction of the court to opt for any one mode of alternative dispute resolution

[1][After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

[1] Ins. by Act 46 of 1999, s. 20 (w.e.f. 1-7-2002).

Order X Rule 1B. Appearance before the conciliatory forum or authority

Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

Order X Rule 1C. Appearance before the court consequent to the failure of efforts of conciliation

Where a suit is referred under rule 1A, and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.]

Order X Rule 2. Oral examination of party, or companion of party

[1][(1) At the first hearing of the suit, the Court-

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.]

[1] Subs. by Act 104 of 1976, s. 60, for rule 2 (w.e.f. 1-2-1977).

Order X Rule 3. Substance of examination to be written

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

[1] This rule is not applicable to the Chief Court of Oudh, see the Oudh Court Act, 1925 (U.P. 4 of 1925), s. 16(2).

Order X Rule 4. Consequence of refusal or inability of pleader to answer

(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court [1][may postpone the hearing of the suit to a day not later than seven days from the date of first hearing] and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

[1] Subs. by Act 46 of 1999, s. 20, for certain words (w.e.f. 1-7-2002).

ORDER XI Discovery and Inspection

Order XI Rule 1. Discovery by interrogatories

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

Order XI Rule 2. Particular interrogatories to be submitted

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court [1][and that court shall decide within seven days from the day of filing of the said application]. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

[1] Ins. by s. 21, ibid. (w.e.f. 1-7-2002).

Order XI Rule 3. Costs of interrogatories

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

Order XI Rule 4. Form of interrogatories

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

Order XI Rule 5. Corporations

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

Order XI Rule 6. Objections to interrogatories by answer

Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, [1][or on the ground of privilege or any other ground], may be taken in the affidavit in answer.

[1] Subs. by Act 104 of 1976, s. 61, for certain words (w.e.f. 1-2-1977).

Order XI Rule 7. Setting aside and striking out interrogatories

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

Order XI Rule 8. Affidavit in answer, filing

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

Order XI Rule 9. Form of affidavit in answer

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

Order XI Rule 10. No exception to be taken

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

Order XI Rule 11. Order to answer or answer further

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

Order XI Rule 12. Application for discovery of documents

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

Order XI Rule 13. Affidavit of documents

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

Order XI Rule 14. Production of documents

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

Order XI Rule 15. Inspection of documents referred to in pleadings or affidavits

Every party to a suit shall be entitled [1][at or before the settlement of issues] to give notice to any other party, in whose pleadings or affidavits reference is made to any document, [2][or who has entered any document in any list annexed to his pleadings,] to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

[1] Subs. by Act 46 of 1999, s. 21, for "at any time" (w.e.f. 1-7-2002).

[2] Ins. by Act 104 of 1976, s. 61 (w.e.f. 1-2-1977).

Order XI Rule 16. Notice to produce

Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Order XI Rule 17. Time for inspection when notice given

The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Order XI Rule 18. Order for inspection

(1) Where the party served with notice rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Order XI Rule 19. Verified copies

(1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations:

Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege [1][unless the document relates to matters of State.]

(3) The Court may, on the application of any party to suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

[1] Ins. by Act 104 of 1976, s. 61 (w.e.f. 1-2-1977).

Order XI Rule 20. Premature discovery

Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Order XI Rule 21. Non-compliance with order for discovery

[1][(1)] Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and [2][an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.]

[3][(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]

[1] Rule 21 renumbered as sub-rule (1) by s. 61, ibid. (w.e.f. 1-2-1977).
[2] Subs. by s. 61, ibid,. for "an order may be made accordingly" (w.e.f. 1-2-1977).
[3] Ins. by s. 61, ibid. (w.e.f. 1-2-1977).

Order XI Rule 22. Using answer to interrogatories at trial

Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer :

Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answer ought not to be used without them, it may direct them to be put in.

Order XI Rule 23. Order to apply to minors

This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

ORDER XI Disclosure, Discovery and inspection of documents in suits before the commercial division of a high court or a commercial court

Order XI Rule 1. Disclosure and discovery of documents

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:-

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only--

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.--A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including-

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only--

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counter-claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim.

(11) The written statement or counter-claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

Order XI Rule 2. Discovery by interrogatories

(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

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

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

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

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

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

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

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

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

Order XI Rule 3. Inspection

(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter-claim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

Order XI Rule 4. Admission and denial of documents

(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:-

(a) correctness of contents of a document;

(b) existence of a document;

(c) execution of a document;

(d) issuance or receipt of a document;

(e) custody of a document.

Explanation.--A statement of admission or denial of the existence of a document made in accordance with sub-rule (2)(b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, - costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

Order XI Rule 5. Production of documents

(1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

Order XI Rule 6. Electronic records

(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000 (21 of 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify--

(a) the parties to such Electronic Record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(d) the source of such electronic record and date and time when the electronic record was printed;

(e) in case of e-mail ids, details of ownership, custody and access to such e-mail ids;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;

(g) deponent's knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of

further proof of any electronic record including metadata or logs before admission of such electronic record.

Order XI Rule 7. Certain provisions of the Code of Civil Procedure, 1908 not to apply

For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.]

State Amendment

Jammu and Kashmir and Ladakh (UTs).

For Order XI of the Code, substitute the following Order, namely.-

"ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS

1. Disclosure and discovery of documents.-(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:-

(a) documents referred and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiffs case; and

(c) nothing in this rule shall apply to documents produced by plaintiffs and relevant only-

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case setup by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode or execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control, or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody. Explanation.-A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix I.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by court, the plaintiff shall file such additional documents in court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody or the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including-

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defense;

(c) nothing in this rule shall apply to documents produced by the defendants and relevant only-

(i) for the cross-examination of the plaintiff's witnesses;

(ii) in answer to any case setup by the plaintiff subsequent to the filing of the plaint; or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counter-claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) the written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii), pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the

defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim.

(11) The written statement or counter-claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit. 2. Discovery by interrogatories.-(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or anyone or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

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

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.

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

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters required into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

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

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.

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

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct. 3. Inspection.-(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter-claim, whichever is later, the court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of court.

(6) The Court may impose exemplary costs against a defaulting party, who willfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents.-(1) Each party shall submit a statement of admissions or denials of all documents

disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:

(a) correctness of contents of a document;

(b) existence of a document;

(c) execution of a document;

(d) issuance or receipt of a document;

(e) custody of a document.

Explanation.-A statement of admission or denial of the existence of a document made in accordance with clause (b) of sub-rule (2) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the direction of the court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the court holds that any party has unduly refused to admit a document under any of the above criteria, costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the court on such party.

(7) The court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents. 5. Production of documents.-(1) Any party to a proceeding may seek or the court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs. 6. Electronic Records.-(1) In case of disclosures and inspection of electronic records as defined in the Information Technology Act, 2000 (21 of 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where electronic records form part of documents disclosed, the declaration on oath to be filed by a party shall specify -

(a) the parties to such electronic record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(d) the source of such electronic record and date and time when the electronic record was printed;

(e) in case of e-mail ids, details of ownership, custody and access to such e-mail ids;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;

(g) deponent's knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;

(i) that the printout or copy furnished was taken from the original computer or computer resource. (4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original Electronic Records.

(5) The court may give directions for admissibility of electronic records at any stage of the proceedings.

(6) Any party may seek directions from the court and the court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record. [Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

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ORDER XII Admissions

Order XII Rule 1. Notice of admission of case

Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Order XII Rule 2. Notice to admit documents

Either party may call upon the other party [1][to admit, within [2][seven] days from the date of service of the notice any document,] saving all exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

[1] Subs. by Act 104 of 1976, s. 62, for "to admit any document" (w.e.f. 1-2-1977).
[2] Subs. by Act 46 of 1999, s. 22, for "fifteen" (w.e.f. 1-7-2002).

Order XII Rule 2A. Document to be deemed to be admitted if not denied after service of notice to admit documents

[1][(1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.]

[1] Ins. by Act 104 of 1976, s. 62 (w.e.f. 1-2-1977).

Order XII Rule 3. Form of notice

A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Order XII Rule 3A. Power of Court to record admission

[1][Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document.]

[1] Ins. by Act 66 of 1956, s. 14 (w.e.f. 1-1-1957).

Order XII Rule 4. Notice to admit acts

Any party, may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs:

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:

[1]* * * * *

[1] Second proviso omitted by Act 46 of 1999, s. 22 (w.e.f. 1-7-2002).

Order XII Rule 5. Form of admissions

A notice to admit facts shall be in Form No. 10 in Appendix C, and admission of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Order XII Rule 6. Judgment on admissions

[1][(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think

fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.]

[1] Subs. by Act 104 of 1976, s. 62, for rule 6 (w.e.f. 1-2-1977).

Order XII Rule 7. Affidavit of signature

An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidenced of such admissions, if evidence thereof is required.

Order XII Rule 8. Notice to produce documents

Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Order XII Rule 9. Costs

If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XIII Production, Impounding and Return of Documents

Order XIII Rule 1. Original documents to be produced at or before the settlement of issues

[1][(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.]

[1] Subs. by Act 46 of 1999, s. 23, for rules 1 and 2 (w.e.f. 1-7-2002).

Order XIII Rule 2. Effect of non-production of documents

[Effect of non-production of documents.] Rep. by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) s. 23 (w.e.f. 1-7-2002).

Order XIII Rule 3. Rejection of irrelevant or inadmissible documents

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Order XIII Rule 4. Endorsements on documents admitted in evidence

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted,

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Order XIII Rule 5. Endorsements on copies of admitted entries in books, accounts and records

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891) where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Order XIII Rule 6. Endorsements on documents rejected an inadmissible in evidence

Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1) together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Order XIII Rule 7. Recording of admitted and return of rejected documents

(1) Every documents which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Order XIII Rule 8. Court may order any document to be impounded

Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Order XIII Rule 9. Return of admitted documents

(1) Any person, whether a party to the suit or not, desirous of receiving back any documents produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of: [1][Provided that a document may be returned at any time earlier then that prescribed by this rule if the person applying therefor-

(a) delivers to the proper officer for being substituted for the original,-

(i) in the case of a party to the suit, a certified copy, and (ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and (b) undertakes to produce the original, if required to do so:]

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

[1] Subs. by Act 104 of 1976, s. 63, for the First proviso (w.e.f. 1-2-1977).

Order XIII Rule 10. Court may send for papers from its own records or from other Courts

(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Order XIII Rule 11. Provisions as to documents applied to material objects

The provisions therein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIII-A Summary Judgment

Order XIIIA Rule 1. Scope of and classes of suits to which this Order applies

(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word "claim" shall include-

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counter-claim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

Order XIIIA Rule 2. Stage for application for summary judgment

An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

Order XIIIA Rule 3. Grounds for summary judgment

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that--

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

Order XIIIA Rule 4. Procedure

(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-rules (a) to (f) mentioned hereunder:-

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,--

(i) include such documentary evidence in its application, and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief. (2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:-

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:-

(a) the reply must precisely--

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must-

(i) include such documentary evidence in its reply; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies; (c) the reply must

state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

Order XIIIA Rule 5. Evidence for hearing of summary judgment

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:-

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing. (2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:-

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing. (3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:-

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

Order XIIIA Rule 6. Orders that may be made by Court

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:-

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1)(a) to (f), the Court shall record its reasons for making such order.

Order XIIIA Rule 7. Conditional order

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1)(b).

(2) Where the Court makes a conditional order, it may:-

(a) make it subject to all or any of the following conditions:-

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and (b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

Order XIIIA Rule 8. Power to impose costs

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.]

ORDER XIV Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon

Order XIV Rule 1. Framing of issues

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions arc those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and [1][after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing is this rule requires the Court to frame and record issued where the defendant at the first hearing of the suit makes no defence.

[1] Subs. by Act 104 of 1976, s. 64, for certain words (w.e.f. 1-2-1977).

Order XIV Rule 2. Court to pronounce judgment on all issues

[1][(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

[1] Subs. by s. 64, ibid., for rule 2 (w.e.f. 1-2-1977).

Order XIV Rule 3. Materials from which issues may be framed

The Court may frame the issues from all or any of the following materials:-

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Order XIV Rule 4. Court may examine witnesses or documents before framing issues

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it [1][may adjourn the framing of issues to a day not later than seven days] and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

[1] Subs. by Act 46 of 1999, s. 24, for certain words (w.e.f. 1-7-2002).

Order XIV Rule 5. Power to amend and strike out, issues

[1][(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.]

[1] Subs. by Act 22 of 2002, s. 11, for rule 5 (w.e.f. 1-7-2002).

Order XIV Rule 6. Questions of fact or law may by agreement be stated in form of issues

(1) Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative or such issue,-

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Order XIV Rule 7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment

Where the Court is satisfied, after making such inquiry as it deems proper,-

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XV Disposal of the Suit at the first hearing

Order XV Rule 1. Parties not at issue

(1) Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

Order XV Rule 2. One of several defendants not at issue

[1][(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.]

[2][(2) Whenever a judgment is pronounced under this rule, decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.]

[1] Rule 2 renumbered as sub-rule (1) by Act 104 of 1976, s. 65 (w.e.f. 1-2-1977).
[2] Ins. by s. 65, ibid. (w.e.f. 1-2-1977).

Order XV Rule 3. Parties at issue

(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence that the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Order XV Rule 4. Failure to produce evidence

Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.]

State Amendment

Uttar Pradesh

Amendment of Order XV.- In the First Schedule, in Order XV, for the existing rule 5, the following rule shall be substituted, namely :-

"5. Striking off defense on failure to deposit admitted rent, etc.- (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the court may subject to the provisions of sub-rule (2), strike off his defense.

"Explanation 1 - The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dated mentioned.

"Explanation 2 - The expression 'entire amount admitted by him to be due' means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any court under section 30 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

"Explanation 3 - The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deductions except the taxes, if any, paid to a local authority in respect of the building on lessor's account.

(2) Before making an order for striking off defense, the court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff ;

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited ;

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the court may require the plaintiff to furnish security for such sum before he is allowed to withdraw the same."

[Vide Uttar Pradesh Act 57 of 1976, s. 7]

Uttar Pradesh

Insertion of new rule in Order XV Schedule 1 of 1908.-- In the First Schedule to the said Code,

in Order XV, after rule 4, the following rule shall be inserted, namely ;

"5. Striking off defense on non-deposit of admitted rent, etc.--(1) In any suit by a lessor for the eviction of a lessee from any immovable property after the determination of his lease, and for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for the use or occupation thereof, whether instituted before or after the commencement of the Uttar Pradesh Civil Laws Amendment Act, 1972, the defendant shall, at or before the first hearing of the suit (or in the case of a suit instituted before the commencement of the said Act, the first hearing after such commencement), deposit the entire amount of rent, or compensation for use and occupation, admitted by him to be due, and thereafter throughout the continuance of the suit, deposit regularly the amount of monthly rent, or compensation for use and occupation, due at the rate admitted by him, and in the event of any default in this regard, the Court may, unless after considering any representation made by him in that behalf it allows him further time on security being furnished for the amount, refuse to entertain any defense or, as the case may be, strike-off his defense.

(2) The provisions of this rule are in addition to and not in derogation of anything contained in rule 10 of Order XXXIX."

[Vide Uttar Pradesh Act 37 of 1972, s. 7]

ORDER XV-A Case Management Hearing

Order XVA Rule 1. First Case Management Hearing

The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

Order XVA Rule 2. Orders to be passed in a Case Management Hearing

In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order--

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908), after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;

(b) listing witnesses to be examined by the parties;

(c) fixing the date by which affidavit of evidence to be filed by parties;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded;

(e) fixing the date by which written arguments are to be filed before the Court by the parties;

(f) fixing the date on which oral arguments are to be heard by the Court; and

(g) setting time limits for parties and their advocates to address oral arguments.

Order XVA Rule 3. Time limit for the completion of a trial

In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

Order XVA Rule 4. Recording of oral evidence on a day-to-day basis

The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

Order XVA Rule 5. Case Management Hearings during a trial

The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

Order XVA Rule 6. Powers of the Court in a Case Management Hearing

(1) In any Case Management Hearing held under this Order, the Court shall have the power to-

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;

(c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so;

(e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;

(f) consolidate proceedings;

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;

(h) direct a separate trial of any issue;

(i) decide the order in which issues are to be tried;

(j) exclude an issue from consideration;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue;

(l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;

(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;

(o) delegate the recording of evidence to such authority appointed by the Court for this purpose;

(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

(q) order any party to file and exchange a costs budget;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit. (2) When the Court passes an order in exercise of its powers under this Order, it may-

(a) make it subject to conditions, including a condition to pay a sum of money into Court; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

Order XVA Rule 7. Adjournment of Case Management Hearing

(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

Order XVA Rule 8. Consequences of non-compliance with orders

Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to-

(a) condone such non-compliance by payment of costs to the Court;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or

(c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.]

State Amendment

Jammu and Kashmir and Ladakh (UTs). Insertion of Order XV-A.-After Order XV of the Code, insert the following Order, namely,-

"ORDER XV-A

1. First Case Management Hearing.-The court shall hold the first Case Management Hearing, not later than four week's from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing.-In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the court may pass an order-

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents produced before it, and on examination conducted by the court under Rule 2 of Order X, if required;

(b) listing witnesses to be examined by the parties;

(c) fixing the date by which affidavit of evidence to be filed by parties;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded;

(e) fixing the date by which written arguments are to be filed before the court by the parties;

(f) fixing the date on which oral arguments are to be heard by the court; and

(g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial.-In fixing dates or setting time limits for the purposes of Rule 2 of this order, the court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis.-The court shall, as far as possible, ensure that the record of evidence shall be carried on, on a day-to-day basis until he cross examination of all the witnesses is complete.

5. Case Management hearings during trial.- The court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the court in a Case Management Hearing.-(1) In any Case Management Hearing held under this order, the court shall have the power to -

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;

(c) extend or shorten the time for compliance with any practice, direction or court order if it finds sufficient reason to do so;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so;

(e) direct a party to attend the court for the purposes of examination under Rule 2 of Order X;

(f) consolidate proceedings;

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;

(h) direct a separate trial of any issue;

(i) decide the order in which issues are to be tried;

(j) exclude an issue from consideration;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue;

(l) direct that evidence be recorded by a Commission where necessary in accordance with Order

XXVI;

(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;

(o) delegate the recording of evidence to such authority appointed by the court for this purpose;

(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

(q) order any party to file land exchange a costs budget;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(2) When the court passes an order in exercise of its powers under this order, it may-

(a) make it subject to conditions, including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the court may direct that the parties also be

present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing.-(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the court may adjourn the hearing to another date upon the payment of such costs as the court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this rule, if the court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders.-Where any party fails to comply with the order of the court passed in a Case Management Hearing, the court shall have the power to-

(a) condone such non-compliance by payment of costs to the court;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be; or

(c) dismiss the plaint or allow the suit where such non-compliance is willful, repeated and the imposition of costs is not adequate to ensure compliance.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)]

ORDER XVI Summoning and Attendance of Witnesses

Order XVI Rule 1. List of witnesses and summons to witnesses

[1][(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the [2][Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).]

[1] Subs. by Act 104 of 1976, s. 66, for rule 1 (w.e.f. 1-2-1977).

[2] Subs. by Act 46 of 1999, s. 25, for certain words (w.e.f. 1-7-2002).

Order XVI Rule 1A. Production of witnesses without summons

[1][A Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.]

[1] Subs. by Act 104 of 1976, s. 66, for rule 1A (w.e.f. 1-2-1977).

Order XVI Rule 2. Expenses of witness to be paid into Court on applying for summons

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed [1][which shall not be later than seven days from the date of making applications under sub-rule (4) of rule 1] pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the

person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts.-In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses.-Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

[2][(4) Expenses to be directly paid to witnesses.-Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.]

[1] Ins. by Act 46 of 1999, s. 25 (w.e.f. 2-7-2002).

[2] Ins. by Act 104 of 1976, s. 66 (w.e.f. 1-2-1977).

Order XVI Rule 3. Tender of expenses to witness

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Order XVI Rule 4. Procedure where insufficient sum paid in

(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witnesses detained more than one day.-Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Order XVI Rule 5. Time, place and purpose of attendance to be specified in summons

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Order XVI Rule 6. Summons to produce document

Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Order XVI Rule 7. Power to require persons present in Court to give evidence or produce document

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Order XVI Rule 7A. Summons given to the party for service

[1][(1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(2) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign and acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party,

re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.]

[1] Ins. by Act 104 of 1976, s. 66 (w.e.f. 1-2-1977).

Order XVI Rule 8. Summons how served

Every summons [1][under this Order, not being a summons delivered to a party for service under rule 7A,] shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

[1] Subs. by s. 66, ibid., for certain words (w.e.f. 1-2-1977).

Order XVI Rule 9. Time for serving summons

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place .at which his attendance is required.

Order XVI Rule 10. Procedure where witness fails to comply with summons

[1][(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-

(a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if service of the summons has affected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified,

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.]

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

[1] Subs. by Act 104 of 1976, s. 66 for sub-rule (1) (w.e.f. 1-2-1977).

Order XVI Rule 11. If witness appears, attachment may be withdrawn

Where, at any time after the attachment of his property, such person appears and satisfies the Court,-

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Order XVI Rule 12. Procedure if witness fails to appear

[1][(1)] The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

[2][(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this

rule after giving notice to such person to show cause why the fine should not be imposed.]

[1] Rule 12 renumbered as sub-rule (1) by s. 66, ibid. (w.e.f. 1-2-1977).
[2] Ins. by s. 66, ibid. (w.e.f. 1-2-1977).

Order XVI Rule 13. Mode of attachment

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Order XVI Rule 14. Court may of its own accord summon as witnesses strangers to suit

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time

thinks it necessary [1][to examine any person, including a party to the suit] and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

[1] Subs. by Act 104 of 1976, s. 66, for certain words (w.e.f. 1-2-1977).

Order XVI Rule 15. Duty of persons summoned to give evidence or produce document

Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

Order XVI Rule 16. When they may depart

(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Order XVI Rule 17. Application of rules 10 to 13

The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Order XVI Rule 18. Procedure where witness apprehended cannot give evidence or produce document

Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

Order XVI Rule 19. No witness to be ordered to attend in person unless resident within certain limits

No one shall be ordered to attend in person to give evidence unless he resides-

(a) within the local limits of the Court's ordinary jurisdiction, or

(b) without such limits but at a place less then [1][one hundred] or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than [2][five hundred kilometres] distance from the court-house: [3][Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.]

[1] Subs. by s. 66, ibid., for "fifty" (w.e.f. 1-2-1977).
[2] Subs. by s. 66, ibid., for "two hundred miles" (w.e.f. 1-2-1977).
[3] The proviso added, by s. 66, ibid. (w.e.f. 1-2-1977).

Order XVI Rule 20. Consequence of refusal of party to give evidence when called on by Court

Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Order XVI Rule 21. Rules as to witnesses to apply to parties summoned

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

State Amendment

Uttar Pradesh

Amendment of Order XVI.- In the First Schedule, in Order XVI -

(a) in rule 2, -]

(i) in sub-rule (1) at the end, the following proviso shall be inserted, namely :-

"Provided, where Government is the party applying for a summons to a Government servant, it shall not be necessary for it to make any such payment into court." ;

(ii) sub-rule (4) as inserted by the Allahabad High Court shall be omitted and after sub-rule (4) as inserted by the Code of Civil Procedure (Amendment) Act, 1976, the following sub-rule shall be inserted, namely :-

"(4-A) Allowances, etc. of, Government servant witnesses to be taxed as costs- Any travelling and daily allowances and the salary, payable to a Government servant who attends the Court to give evidence or to produce a document shall, on the amount being certified by such witness be taxable as costs.

"Explanation 1 - The travelling and daily allowances shall be in accordance with the rules governing such allowances, applicable to the Government servant in question.

"Explanation 2 - The daily allowance and salary of the Government servant shall be proportionate to the number of days of his attendance required by the Court." ;

(b) in rule 4, the following proviso shall be inserted, namely :-

"Provided that nothing in this rule shall apply to a case where the witness is a Government servant summoned at the instance of Government as a party."

[Vide Uttar Pradesh Act 57 of 1976, s. 8]

ORDER XVI A Attendance of witnesses confined or detained in prisons

Order XVIA Rule 1. Definitions

In this Order,-

(a) "detained" includes detained under any law providing for preventive detention;

(b) "prison" includes-

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and

(ii) any reformatory, borstal institution or other institution of a like nature.

Order XVIA Rule 2. Power to require attendance of prisoners to give evidence

Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence:

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometers, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

Order XVIA Rule 3. Expenses to be paid into Court

(1) Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(2) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made by the High Court in that behalf.

Order XVIA Rule 4. Power of State Government to exclude certain persons from the operation of rule 2

(1) The

State Government may, at any time, having regard to the matters specified in sub-rule (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely:-

(a) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and

(c) the public interest, generally.

Order XVIA Rule 5. Officer in charge of prison to abstain from carrying out order in certain cases

Where the person in respect of whom an order is made under rule 2-

(a) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under rule 4 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

Order XVIA Rule 6. Prisoner to be brought to Court in custody

In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Order XVIA Rule 7. Power to issue commission for examination of witness in prison

(1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this Order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.]

ORDER XVII Adjournment

Order XVII Rule 1. Court may grant time and adjourn hearing

[1][(1) The court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.]

(2) Costs of adjournment.-In every such case the Court shall fix a day for the further hearing of the suit, and [2][shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:]

[3][Provided that,-

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

[1] Subs. by Act 46 of 1999, s. 26, for sub-rule (1) (w.e.f. 1-7-2002).

[2] Subs. by s. 26, ibid., for certain words (w.e.f. 1-7-2002).

[3] Subs. by Act 104 of 1976, s. 68, for the proviso (w.e.f. 1-2-1977).

Order XVII Rule 2. Procedure if parties fail to appear on day fixed

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

[1][Explanation.-Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.]

[1] The Explanation ins. by Act 104 of 1976, s. 68 (w.e.f. 1-2-1977).

Order XVII Rule 3. Court may proceed notwithstanding either party fails to produce evidence, etc

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed [1][the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under rule 2.]

[1] Subs. by s. 68, ibid., for certain words (w.e.f. 1-2-1977).

ORDER XVIII Hearing of the suit and examination of witnesses

Order XVIII Rule 1. Right to begin

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Order XVIII Rule 2. Statement and production of evidence

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

[1][(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjourment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.]

[2][(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.]

[3][* * * * *]

State Amendment

Jammu and Kashmir and Ladakh (UTs).-

In Rule 2, after sub-rule (3), insert the following sub-rules, namely:-

(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the court to limit the time for oral submissions having regard to the nature and complexity of the matter.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Ins. by Act 22 of 2002, s. 12 (w.e.f. 1-7-2002).

[2] Subs. by Act 4 of 2016, s. 16 and Sch., for Sub-rules (3A), (3B), (3C), (3D), 3(E) and 3(F), Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

[3] Sub-rule (4) omitted by Act 46 of 1999, s. 27 (w.e.f. 1-7-2002).

Order XVIII Rule 3. Evidence where several issues

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Order XVIII Rule 3A. Party to appear before other witnesses

[1][Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.]

[1] Ins. by Act 104 of 1976, s. 69 (w.e.f. 1-2-1977).

Order XVIII Rule 4. Recording of evidence

[1][(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

[2][(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.]

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.]

State Amendment

Jammu and Kashmir and Ladakh (UTs).-

In Rule 4, after sub-rule (1), insert the following sub-rules, namely:-

(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

[1] Subs. by Act 22 of 2002, s. 12, for rule 4 (w.e.f. 1-7-2002).

[2] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

Order XVIII Rule 5. How evidence shall be taken in appealable cases

[1][[2]In case in which an appeal is allowed, the evidence of each witness shall be,-

(a) taken down in the language of the Court,-

(i) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(ii) from the dictation of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.]

[1] Subs. by Act 104 of 1976, s. 69, for rule 5 (w.e.f. 1-2-1977).

[2] The provisions of rule so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16.

Order XVIII Rule 6. When deposition to be interpreted

[1]Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

[1] The provisions of rules 6, 7, 8, 9, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see, s. 16, ibid.

Order XVIII Rule 7. Evidence under section 138

[1]Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

[1] The provisions of rules 6, 7, 8, 9, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see, s. 16, ibid.

Order XVIII Rule 8. Memorandum when evidence not taken down by Judge

[1]Where the evidence is not taken down in writing by the Judge, [2][or from his dictation in the open Court, or recorded mechanically in his presence,] he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

[1] The provisions of rules 6, 7, 8, 9, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see, s. 16, ibid.

[2] Ins. by Act 104 of 1976, s. 69 (w.e.f. 1-2-1977).

Order XVIII Rule 9. When evidence may be taken in English

[1][[2](1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the judge may so take it down or cause it to be taken down.

(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.]

[1] Subs. by Act 104 of 1976, s. 69 for rule 9 (w.e.f. 1-2-1977).

[2] The provisions of rules 6, 7, 8, 9, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see, s. 16 (2), ibid.

Order XVIII Rule 10. Any particular question and answer may be taken down

The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

Order XVIII Rule 11. Questions objected to and allowed by Court

[1]Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

[1] The provisions of rules 11, 13, 14, 15, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XVIII Rule 12. Remarks on demeanour of witnesses

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

Order XVIII Rule 13. Memorandum of evidence in unappealable cases

[1][[2]In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.]

[1] Subs. by Act 104 of 1976, s. 69, for the rule 13 (w.e.f. 1-2-1977).

[2] The provisions of rules 11, 13, 14, 15, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XVIII Rule 14. Judge unable to make such memorandum to record reasons of his inability

[Judge unable to make such memorandum to record reasons of his inability] omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 69 (w.e.f. 1-2-1977).]

Order XVIII Rule 15. Power to deal with evidence taken before another Judge

[1](1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

[1] The provisions of rules 11, 13, 14, 15, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XVIII Rule 16. Power to examine witness immediately

[1](1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

[1] The provisions of rules 11, 13, 14, 15, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XVIII Rule 17. Court may recall and examine witness

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Order XVIII Rule 17A. Production of evidence not previously known or which could not be produced despite due diligence

[Production of evidence not previously known or which could not be produced despite due diligence.] omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 27 (w.e.f. 1-7-2002).

Order XVIII Rule 18. Power of Court to inspect

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise [1][and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit].

[1] Ins. by s. 69, ibid. (w.e.f. 1-2-1977).

Order XVIII Rule 19. Power to get statements recorded on commission

[1][Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI.]

[1] Ins. by Act 46 of 1999, s. 27 (w.e.f. 1-7-2002).

ORDER XIX Affidavits

Order XIX Rule 1. Power to order any point to be proved by affidavit

Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Order XIX Rule 2. Power to order attendance of deponent for cross-examination

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

Order XIX Rule 3. Matters to which affidavits shall be confined

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

State Amendment

Jammu and Kashmir and Ladakh (UTs).-

In Order XIX of the Code, after Rule 3, insert the following new rules, namely-

4. Court may control evidence.-

(1) The court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the court.

(2) The court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

5. Redacting or rejecting evidence.-

A court may, in its discretion, for reasons to be recorded in writing-

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence.-

An affidavit must comply with the form and requirements set forth below:-

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates

and events that are relevant for proving any fact or any other matter dealt with;

(b) where the court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state-

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief.

(e) an affidavit should-

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020)].

Order XIX Rule 4. Court may control evidence

[1][(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

[1] Ins. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value. (w.e.f. 23-10-2015).

Order XIX Rule 5. Redacting or rejecting evidence

A Court may, in its discretion, for reasons to be recorded in writing--

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

Order XIX Rule 6. Format and guidelines of affidavit of evidence

An affidavit must comply with the form and requirements set forth below:-

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state-

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief;

(e) an affidavit should-

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.]

Amendment of Order XIX.-In the Schedule, in Order XIX, in rule 1, for the existing proviso, the following proviso shall be substituted, namely:--

"Provided that if it appears to the Court, whether at the instance of either party, or otherwise and whether before or after the filing of such affidavit, that the production of such witness for cross-examination is necessary and his attendance can be produced, the Court shall order the attendance of such witness, whereupon the witness may be examined, cross-examined and re-examined."

[Vide Uttar Pradesh Act 57 of 1976, s. 9]

ORDER XX Judgment and decree

Order XX Rule 1. Judgment when pronounced

[1][[2][3][(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:]

[4][Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]

[5][(1) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.]

[4][(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment [6]***.

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.]

[1] Subs. by Act 66 of 1956, s. 14, for rule 1 (w.e.f. 1-1-1957).

[2] The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh , see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

[3] Subs. by Act 22 of 2002, s. 13, for sub-rule (1) (w.e.f. 1-7-2002), Earlier rule 1 renumbered as sub-rule (1) of that rule by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

[4] Ins. by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

[5] Subs. by Act 4 of 2016, s. 16 and Sch., Shall be applicable to commercial disputes of a specified value (w.e.f. 23-10-2015).

[6] Certain words omitted by Act 46 of 1999, s. 28 (w.e.f. 1-2-1977).

Order XX Rule 2. Power to pronounce judgment written by judge's predecessor

[1][A Judge shall] pronounce a judgment written, but not pronounced, by his predecessor.

[1] Subs. by Act 104 of 1976, s. 70 for "A Judge may" (w.e.f. 1-2-1977).

Order XX Rule 3. Judgment to be signed

[1]The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

[1] The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XX Rule 4. Judgments of Small Cause Courts

[1](1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.-Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

[1] The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XX Rule 5. Court to state its decision on each issue

[1]In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

[1] The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

Order XX Rule 5A. Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders

[1][Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.]

[1] Ins. by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

Order XX Rule 6. Contents of decree

(1) The decree shall agree with the judgment; it shall contain the number of the suit, the [1][names and descriptions of the parties, their registered addresses,] and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

[1] Subs. by s. 70, ibid., for "names and descriptions of the parties" (w.e.f. 1-2-1977).

Order XX Rule 6A. Preparation of decree

[1][(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy

made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

[1] Subs. by Act 46 of 1999, s. 28, for rules 6A and 6B (w.e.f. 1-7-2002).

Order XX Rule 6B. Copies of judgments when to be made available

Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.]

Order XX Rule 7. Date of decree

The decree shall bear the day on which the judgment was pronounced, and, when the judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Order XX Rule 8. Procedure where Judge has vacated office before signing decree

Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Order XX Rule 9. Decree for recovery of immovable property

Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Order XX Rule 10. Decree for delivery of movable property

Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Order XX Rule 11. Decree may direct payment by instalments

(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason [1][incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that] payment of the amount

decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) Order, after decree, for payment by instalments.-After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

[1] Subs. by Act 104 of 1976, s. 70, for certain words (w.e.f. 1-2-1977).

Order XX Rule 12. Decree for possession and mesne profits

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

(a) for the possession of the property;

[1][(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

(ba) for the mesne profits or directing an inquiry as to such mesne profits;]

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever, event first occurs. (2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

[1] Subs. by Act 104 of 1976, s. 70, for cl. (b) (w.e.f. 1-2-1977).

Order XX Rule 12A. Decree for specific performance of contract for the sale or lease of immovable property

[1][Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.]

[1] Ins. by s. 70, ibid. (w.e.f. 1-2-1977).

Order XX Rule 13. Decree in administration suit

(1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Order XX Rule 14. Decree in pre-emption suit

(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall-

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decrees against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs. (2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,-

(a) if and in so far as the claims decreed are equal in decree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior preemptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Order XX Rule 15. Decree in suit for dissolution of partnership

Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Order XX Rule 16. Decree in suit for account between principal and agent

In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Order XX Rule 17. Special directions as to accounts

The Court may either by the decree directing an account to be taken or by any subsequent order give special direction with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Order XX Rule 18. Decree in suit for partition of property or separate possession of a share therein

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Order XX Rule 19. Decree when set-off or counter-claim is allowed

(1) Where the defendant has been allowed a set-off [1][or counter-claim] against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Appeal from decree relating to set-off or counter-claim.-Any decree passed in a suit in which a set-off [1][or counter-claim] is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off [1][or counter-claim] had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

[1] Ins. by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

Order XX Rule 20. Certified copies of judgment and decree to be furnished

Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

ORDER XXA Costs

Order XXA Rule 1. Provisions relating to certain items

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of,-

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

Order XXA Rule 2. Costs to be awarded in accordance with the rules made by High Court

The award of Costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.]

ORDER XXI Execution of Decrees and Orders

Payment under Decree

Order XXI Rule 1. Modes of paying money under decree

[1][(1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by [2][speed post with registration and proof of delivery].

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

[1] Subs. by Act 104 of 1976, s. 72, for rule 1 (w.e.f. 1-2-1977).

[2] Subs. by Act 37 of 2025, s. 3 and Sch. II, for "registered post, acknowledgement due" (w.e.f. 20-12-2025).

Order XXI Rule 2. Payment out of Court to decree-holder

(1) Where any money payable under a decree of any kind is paid out of Court, [1][or decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor [2][or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

[3][(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

(a) the payment is made in the manner provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.]

[3](3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

[1] Subs. by Act 104 of 1976, s. 72, for certain words (w.e.f. 1-2-1977).

[2] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

[3] In the application of the Act to Punjab, sub-rule (3) rep. by the Punjab Relief of Indebtedness Act, 1934 (Pun. Act 7 of 1934), s. 36.

Courts executing decrees

Order XXI Rule 3. Lands situate in more than one jurisdiction

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Order XXI Rule 4. Transfer to Court of Small Causes

Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the title being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras [1][or Bombay], such Court may send to the Court of Small Causes in Calcutta, Madras [1][or Bombay], as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

[1] Subs. by the A.O. 1937, for "Bombay or Rangoon".

Order XXI Rule 5. Mode of transfer

[1][Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.]

[1] Subs. by Act 104 of 1976, s. 72, for rule 5 (w.e.f. 1-2-1977).

Order XXI Rule 6. Procedure where Court desires that its own decree shall be executed by another Court

The Court sending a decree for execution shall send-

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Order XXI Rule 7. Court receiving copies of decree, etc., to file same without proof

The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Order XXI Rule 8. Execution of decree or order by Court to which it is sent

Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Order XXI Rule 9. Execution by High Court of decree transferred by other Court

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for execution

Order XXI Rule 10. Application for execution

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Order XXI Rule 11. Oral application

(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Written application.-Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:-

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether,-

(i) by the delivery of any property specifically decreed;

[1][(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

[1] Subs. by Act 104 of 1976, s. 72, for sub-clause (ii) (w.e.f. 1-2-1977).

Order XXI Rule 11A. Application for arrest to state grounds

[1][Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.]

[1] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 12. Application for attachment of movable property not in judgment-debtor's possession

Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Order XXI Rule 13. Application for attachment of immovable property to contain certain particulars

Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot-

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Order XXI Rule 14. Power to require certified extract from Collector's register in certain cases

Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Order XXI Rule 15. Application for execution by Joint decree-holders

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.

Order XXI Rule 16. Application for execution by transferee of decree

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

[1][Explanation.-Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]

[1] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 17. Procedure on receiving application for execution of decree

(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, [1][the Court shall allow] the defect to be remedied then and there or within a time to be fixed by it.

[2][1A. If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.]

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

[1] Subs. by s. 72, ibid., for certain words (w.e.f. 1-2-1977).

[2] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 18. Execution in case of cross-decrees

(1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then-

(a) if the two sums are, equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless-

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party files the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000. against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 1,000 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his

joint-decree as cross-decree under this rule.

Order XXI Rule 19. Execution in case of cross-claims under same decree

Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then-

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Order XXI Rule 20. Cross-decrees and cross-claims in mortgage suits

The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Order XXI Rule 21. Simultaneous execution

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Order XXI Rule 22. Notice to show cause against execution in certain cases

(1) Where an application for execution is made-

(a) more than [1][two years] after the date of the decree, or

(b) against the legal representative of a party to the decree [2][or where an application is made for execution of a decree filed under the provisions of section 44A], [3][or]

[3][(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,]

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than [1][two years] having elapsed between the date of the decree and the application for execution if the application is made within [1][two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

[1] Subs. by Act 104 of 1976, s. 72, for "one year" (w.e.f. 1-2-1977).
[2] Ins. by Act 8 of 1937, s. 3.
[3] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 22A. Sale not be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale

[1][Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.]

[1] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 23. Procedure after issue of notice

(1) Where the person to whom notice is issued under [1][rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

[1] Subs. by Act 38 of 1978, s. 3 and Sch. II, for "the last preceding rule" (w.e.f. 26-11-1978).

Process for execution

Order XXI Rule 24. Process for execution

(1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

[1][(3) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.]

[1] Subs. by Act 104 of 1976, s. 72, for sub-rule (3) (w.e.f. 1-2-1977).

Order XXI Rule 25. Endorsement on process

(1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Stay of execution

Order XXI Rule 26. When Court may stay execution

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor.-Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, [1][the Court shall require] such security from, or impose such condition upon, the judgment-debtor as it thinks fit.

[1] Subs. by Act 104 of 1976, s. 72, for "the Court may require" (w.e.f. 1-2-1977).

Order XXI Rule 27. Liability of judgment-debtor discharged

No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Order XXI Rule 28. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to

Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Order XXI Rule 29. Stay of execution pending suit between decree-holder and judgment-debtors

Where a suit is pending in any Court against the holder of a decree of such Court [1][or of a decree which is being executed by such Court,] on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

[1][Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]

[1] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Mode of execution

Order XXI Rule 30. Decree for payment of money

Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Order XXI Rule 31. Decree for specific movable property

(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for [1][three months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [2][three months] from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

[1] Subs. by s. 72, ibid., for "six months" (w.e.f. 1-2-1977).
[2] Subs. by Act 104 of 1976, s. 72, for "Six months" (w.e.f. 1-2-1977).

Order XXI Rule 32. Decree for specific performance for restitution of conjugal rights, or for an injunction

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [1][in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for [2][six months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [2][six months] from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

[3][Explanation.-For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.]

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

[1] Ins. by Act 29 of 1923, s. 2.

[2] Subs. by Act 104 of 1976, s. 72, for "one year" (w.e.f. 1-2-1977).
[3] Ins. by Act 22 of 2002, s. 14 (w.e.f. 1-7-2002).

Order XXI Rule 33. Discretion of Court in executing decrees for restitution of conjugal rights

(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree [1][against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree [2][shall be executed in the manner provided in this rule.]

(2) Where the Court has made an order under sub-rule (1) [3]***, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again review the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

[1] Ins. by Act 29 of 1923, s. 3.
[2] Subs. by s. 3, ibid., for "shall not be executed by detention in prison".
[3] The words "and the decree-holder is the wife" omitted by s. 3, ibid.

Order XXI Rule 34. Decree for execution of document, or endorsement of negotiable instrument

(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall there upon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:-

"C. D., Judge of the Court of,

(or as the case may be), for A. B., in a suit by E. F against A. B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

[1][(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.]

[1] Subs. by Act 104 of 1976, s. 72, for sub-rule (6) (w.e.f. 1-2-1977).

Order XXI Rule 35. Decree for immovable property

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Order XXI Rule 36. Decree for delivery of immovable property when in occupancy of tenant

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Order XXI Rule 37. Discretionary power to permit judgment-debtor to show cause against detention in prison

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court [1][shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

[2][Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

[1] Subs. by Act 21 of 1936, s. 3, for "may".
[2] Ins. by s. 3, ibid.

Order XXI Rule 38. Warrant for arrest to direct judgment-debtor to be brought up

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Order XXI Rule 39. Subsistence allowance

(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgement-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Order XXI Rule 40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest

[1][(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed

to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]

[1] Subs. by s. 4, ibid., for rule 40.

Attachment of property

Order XXI Rule 41. Examination of judgment-debtor as to his property

[1][(1)] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-

(a) the judgment-debtor, or

(b) [2][where the judgment-debtor is a corporation], any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

[3][(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.]

[1] Rule 41 renumbered as sub-rule (1) by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

[2] Subs. by s. 72, ibid., for "in the case of a corporation" (w.e.f. 1-2-1977).

[3] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Order XXI Rule 43. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor

Where the property to be attached is movable property other than agricultural produce, in the possession of the judgement-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Order XXI Rule 43A. Custody of movable property

[1][(1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance

of the judgment-debtor or of the decree holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,-

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced-

(i) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgment-debtor or such other person, on an application in execution; and (c) any order determining such liability shall be appealable as a decree.]

[1] Ins. by Act 104 of 1976, s. 72. (w.e.f. 1-2-1977).

Order XXI Rule 44. Attachment of agricultural produce

Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,-

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Order XXI Rule 45. Provisions as to agricultural produce under attachment

(1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do, all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Order XXI Rule 46. Attachment of debt, share and other property not in possession of judgment-debtor

(1) In the case of-

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,-

(i) in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until

the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor; in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Order XXI Rule 46A. Notice to garnishee

[1][(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

[1] Ss. 46A to 46-I ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 46B. Order against garnishee

Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

Order XXI Rule 46C. Trial of disputed questions

Where the garnishee disputes liability, the Court may order that any issue of question necessary for the determination of liability shall be tried as if it where an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

Order XXI Rule 46D. Procedure where debt belongs to third person

Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

Order XXI Rule 46E. Order as regards third person

After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

Order XXI Rule 46F. Payment by garnishee to be valid discharge

Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

Order XXI Rule 46G. Costs

The costs of any application made under rule 46A and of any proceeding arising there from or incidental thereto shall be in the discretion of the Court.

Order XXI Rule 46H. Appeals

An order made under rule 46B, rule 46C or rule 46E shall be applicable as a decree.

Order XXI Rule 46I. Application to negotiable instruments

The provisions of rules 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.]

Order XXI Rule 47. Attachment of share in movables

Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Order XXI Rule 48. Attachment of salary or allowances of servant of the Government or railway company or local authority

(1) Where the property to be attached is the salary or allowances of a [1][servant of the Government] or of a servant of a railway company or local authority [2][or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)] the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such officer as [3][the appropriate Government may by notification in the Official Gazette] appoint [4][in this behalf,-

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.]

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by [5][the appropriate Government] in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

[6][(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2) shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation of Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.]

[7][Explanation.-In this rule, "appropriate Government" means,-

(i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(ii) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a

servant of any other Government company, the State Government.]

[1] Subs. by Act 5 of 1943, s. 3, for "public officer".
[2] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).
[3] Subs. by Act 25 of 1942, s. 3 and the Second Sch., for "the Central Government or the Provincial Government may by notification in their Official Gazette".
[4] Subs. by Act 26 of 1939, s. 2, for certain words.
[5] Subs. by Act 25 of 1942, s. 3, and the Second Sch. II, for "the Central Government or the Provincial Government, as the case may be".
[6] Subs. by Act 104 of 1976, s. 72, for sub-rule (3) (w.e.f. 1-2-1977).
[7] Subs. by s. 72, ibid., for Explanation (w.e.f. 1-2-1977).

Order XXI Rule 48A. Attachment of salary or allowances of private employees

[1][(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provision of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtors, is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India, and the employer shall be liable for any sum paid in contravention of this rule.]

[1] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 49. Attachment of partnership property

(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property, and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within [1][India].

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within [1][India].

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such applications shall be similarly served.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XXI Rule 50. Execution of decree against firm

(1) Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of [1][section 30 of

the Indian Partnership Act, 1932 (9 of 1932)].

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may, apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

[2][(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provisions of rule 10 of Order XXX.]

[1] Subs. by Act 104 of 1976, s. 72, for certain words (w.e.f. 1-2-1977).
[2] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 51. Attachment of negotiable instruments

Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Order XXI Rule 52. Attachment of property in custody of Court or public officer

Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Order XXI Rule 53. Attachment of decrees

(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,-

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until-

(i) the Court which passed the decree sought to be executed cancels the notice, or

[1][(ii) (a) the holder of the decree sought to be executed, or

(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court,

applies to the Court receiving such notice to execute the attached decree.]

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceeds to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another of decree the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order [2][with knowledge thereof or] after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

[1] Subs. by Act 104 of 1976, s. 72, for sub-clause (ii) (w.e.f. 1-2-1977).
[2] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 54. Attachment of immovable property

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer of charge.

[1][(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon, a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate [1][and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

[1] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 55. Removal of attachment after satisfaction of decree

Where-

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Order XXI Rule 56. Order for payment of coin or currency notes to party entitled under decree

Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Order XXI Rule 57. Determination of attachment

[1][(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(2) If the Court omits to give such direction, the attachment shall be deemed to have ceased.]

[1] Subs. by Act 104 of 1976, s. 72, for rule 57 (w.e.f. 1-2-1977).

Adjudication of claims and objections

Order XXI Rule 58. Adjudication of claims to or objections to attachment of property

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such, claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the

parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such-suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Order XXI Rule 59. Stay of sale

Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.]

Order XXI Rule 60. Release of property from attachment

[Release of property from attachment.] Omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 61. Disallowance of claim to property attached

[Disallowance of claim to property attached.] Omitted by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 62. Continuance of attachment subject to claim of incumbrancer

[Continuance of attachment subject to claim of incumbrancer.] Omitted by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 63. Saving of suits to establish right to attached property

[Saving of suits to establish right to attached property.] Omitted by s. 72, ibid. (w.e.f. 1-2-1977).]

Sale generally

Order XXI Rule 64. Power to order property attached to be sold and proceeds to be paid to person entitled

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Order XXI Rule 65. Sales by whom conducted and how made

Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Order XXI Rule 66. Proclamation of sales by public auction

(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the

time and place of sale, and specify as fairly and accurately as possible-

(a) the property to be sold [1][or, where a part of the property would be sufficient to satisfy the decree, such part];

(b) the revenue assessed upon the estate or past of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

[1][Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the Parties.]

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

[1] Added by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 67. Mode of making proclamation

(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Order XXI Rule 68. Time of sale

Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least [1][fifteen days] in the case of immovable property, and of at least [2][seven days] in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale.

[1] Subs. by Act 104 of 1976, s. 72, for "thirty days" (w.e.f. 1-2-1977).

[2] Subs. by s. 72, ibid., for "fifteen days" (w.e.f. 1-2-1977).

Order XXI Rule 69. Adjournment or stoppage of sale

(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than [1][thirty] days afresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

[1] Subs. by s. 72, ibid., for " seven days" (w.e.f. 1-2-1977).

Order XXI Rule 70. Saving of certain sales

[Saving of certain sales.] Omitted by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 14 (w.e.f. 1-1-1957).

Order XXI Rule 71. Defaulting purchaser answerable for loss on re-sale

Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court [1]*** by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

[1] The words "or to the Collector or subordinate of the Collector, as the case may," omitted by Act 66 of 1956, s. 14 (w.e.f. 1-1-1957).

Order XXI Rule 72. Decree-holder not to bid for or buy property without permission

(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where decree-holder purchases, amount of decree may be taken as payment.-Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

Order XXI Rule 72A. Mortgagee not to bid at sale without the leave of the Court

[1][(1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be-

(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage. (3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.]

[1] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 73. Restriction on bidding or purchase by officers

No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of movable property

Order XXI Rule 74. Sale of agricultural produce

(1) Where the property to be sold is agricultural produce, the sale shall be held,-

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered, at or near-the threshing floor or place for trading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,-

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Order XXI Rule 75. Special provisions relating to growing crops

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Order XXI Rule 76. Negotiable instruments and shares in corporations

Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorized the sale of such instrument or share through a broker.

Order XXI Rule 77. Sale by public auction

(1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Order XXI Rule 78. Irregularity not to vitiate sale, but any person injured may sue

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Order XXI Rule 79. Delivery of movable property, debts and shares

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share, may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Order XXI Rule 80. Transfer of negotiable instruments and shares

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or, share the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:-

A. B. by C.D. Judge of the Court of (or as the case may be), in a suit by E. F. against A.B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Order XXI Rule 81. Vesting order in case of other property

In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of immovable property

Order XXI Rule 82. What Court may order sales

Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

Order XXI Rule 83. Postponement of sale to enable judgment-debtor to raise amount of decree

(1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court:

Provided also that not mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sole in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Order XXI Rule 84. Deposit by purchaser and re-sale on default

(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Order XXI Rule 85. Time for payment in full of purchase money

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

Order XXI Rule 86. Procedure in default of payment

In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Order XXI Rule 87. Notification on re-sale

Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Order XXI Rule 88. Bid of co-sharer to have preference

Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Order XXI Rule 89. Application to set aside sale on deposit

(1) Where immovable property has been sold in execution of a decree, [1][any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his depositing in Court,-

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

[1] Subs. by Act 104 of 1976, s. 72, for certain words (w.e.f. 1-2-1977).

Order XXI Rule 90. Application to set aside sale on ground of irregularity or fraud

[1][(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.-The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.]

[1] Subs. by s. 72, ibid., for rule 90 (w.e.f. 1-2-1977).

Order XXI Rule 91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest

The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Order XXI Rule 92. Sale when to become absolute or be set aside

(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

[1][Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.]

(2) Where such application is made and allowed, and where, in the case of an application-under rule 89, the deposit required by that rule is made within [2][sixty days] from the date of sale, [3][or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale]:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby:

[4][Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002).]

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

[5][(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held

shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered.]

[1] Added by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).
[2] Subs. by Act 22 of 2002, s. 14, for "thirty days" (w.e.f. 1-7-2002).
[3] Subs. by Act 104 of 1976, s. 72, for "the Court shall make an order setting aside the sale" (w.e.f. 1-2-1977).
[4] Ins. by Act 22 of 2002, s. 14 (w.e.f. 1-7-2002).
[5] Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

Order XXI Rule 93. Return of purchaser-money in certain cases

Where a sale of immovable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Order XXI Rule 94. Certificate to purchaser

Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Order XXI Rule 95. Delivery of property in occupancy of judgment-debtor

Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Order XXI Rule 96. Delivery of property in occupancy of tenant

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance of delivery of possession to decree-holder or purchaser

Order XXI Rule 97. Resistance or obstruction to possession of immovable property

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[1][(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

[1] Subs. by s. 72, ibid., for sub-rule (2) (w.e.f. 1-2-1977).

Order XXI Rule 98. Orders after adjudication

[1][(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

[1] Subs. by Act 104 of 1976, s. 72, for rules 98 to 103 (w.e.f. 1-2-1977).

Order XXI Rule 99. Dispossession by decree-holder or purchaser

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Order XXI Rule 100. Order to be passed upon application complaining of dispossession

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

Order XXI Rule 101. Question to be determined

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Order XXI Rule 102. Rules not applicable to transferee pendente lite

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.-In this rule, "transfer" includes a transfer by operation of law.

Order XXI Rule 103. Orders to be treated as decrees

Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.]

Order XXI Rule 104. Orders under rule 101 or rule 103 to be subject to the result or pending suit

[1][Every order made under rule 101 or rule 103 shall subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order, is made if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

[1] Ins. by s. 72, ibid. (w.e.f. 1-2-1977).

Order XXI Rule 105. Hearing of application

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

Explanation.-An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

Order XXI Rule 106. Setting aside orders passed ex parte, etc

(1) The applicant, against whom an order is made under sub-rule (2) of rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance whom the application was called on for hearing, the Court shall set aside the order or such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.]

State Amendment

Uttar Pradesh

Amendment of Order XXI.- In the First Schedule, in Order XXI, rule 104, rule 105 and rule 106 as inserted by Allahabad High Court shall be re-numbered as rule 106-A, rule 106-B and rule 106-C respectively.

[Vide Uttar Pradesh Act 57 of 1976, s. 10]

ORDER XXII Death, Marriage and Insolvency or Parties

Order XXII Rule 1. No abatement by party's death if right to sue survives

The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Order XXII Rule 2. Procedure where one of several plaintiffs or defendants dies and right to sue survives

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Order XXII Rule 3. Procedure in case of death of one of several plaintiffs or of sole plaintiff

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Order XXII Rule 4. Procedure in case of death of one of several defendants or of sole defendant

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

[1][(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application with the period specified in the said Act,

the Court shall, in considering the application under the said section 5 have due regard to the fact of such ignorance, if proved.]

[1] Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

Order XXII Rule 4A. Procedure where there is no legal representative

[1][(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for, the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall as certain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.]

[1] Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

Order XXII Rule 5. Determination of question as to legal representative

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

[1][Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]

[1] Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

Order XXII Rule 6. No abatement by reason of death after hearing

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Order XXII Rule 7. Suit not abated by marriage of female party

(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with the judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

Order XXII Rule 8. When plaintiff's insolvency bars suit

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

(2) Procedure where assignee fails to continue suit, or give security.-Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit an awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Order XXII Rule 9. Effect of abatement or dismissal

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the

abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the [1][Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).

[2][Explanation.-Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.]

[1] See now the Limitation Act, 1973 (36 of 1963), ss. 4 and 5.

[2] Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

Order XXII Rule 10. Procedure in case of assignment before final order in suit

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Order XXII Rule 10A. Duty of pleader to communicate to Court death of a party

[1][Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]

[1] Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

Order XXII Rule 11. Application of Order to appeals

In the application of this Order to appeals, so far as may be, the word "Plaintiff" shall be held to include an appellant, the word "defendant" a respondant, and the word "suit" an appeal.

Order XXII Rule 12. Application of Order to proceedings

Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII Withdrawal and Adjustment of Suits

Order XXIII Rule 1. Withdrawal of suit or abandonment of part of claim

[1][(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

it may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

[1] Subs. by s. 74, ibid., for rule 1 (w.e.f. 1-2-1977).

Order XXIII Rule 1A. When transposition of defendants as plaintiffs may be permitted

[1][Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.]

[1] Ins. by Act 104 of 1976, s. 74 (w.e.f. 1-2-1977).

Order XXIII Rule 2. Limitation law not affected by first suit

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Order XXIII Rule 3. Compromise of suit

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [1][in writing and signed by the parties], or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [2][so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[1][Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[1][Explanation.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not he deemed to be lawful within the meaning of this rule.]

[1] Ins. by Act 104 of 1976, s. 74 (w.e.f. 1-2-1977).
[2] Subs. by s. 74, ibid., for certain words (w.e.f. 1-2-1977).

Order XXIII Rule 3A. Bar to suit

[1][No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

[1] Ins. by Act 104 of 1976, s. 74 (w.e.f. 1-2-1977).

Order XXIII Rule 3B. No agreement or compromise to be entered in a representative suit without leave of Court

(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Below granting such leave, the Court shall give notice in such manner as it may think fit to such persons is as may appear to it to be interested in the suit.

Explanation.-In this rule, "representative suit" means,-

(a) a suit under Section 91 or Section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.]

Order XXIII Rule 4. Proceedings in execution of decrees not affected

Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV Payment into Court

Order XXIV Rule 1. Deposit by defendant of amount in satisfaction of claim

The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Order XXIV Rule 2. Notice of deposit

Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Order XXIV Rule 3. Interest on deposit not allowed to plaintiff after notice

No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Order XXIV Rule 4. Procedure where plaintiff accepts deposit as satisfaction in part

(1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

(2) Procedure where he accepts it as satisfaction in full.-Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court, B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court B accepts in full satisfaction of his claim. The Court should also give B his cost of suit. A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit- B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV Security for Costs

Order XXV Rule 1. When security for costs may be required from plaintiff

[1][(1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.

(2) Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1).]

[1] Subs. by Act 66 of 1956, s. 14, for rule 1 (w.e.f. 1-1-1957).

Order XXV Rule 2. Effect of failure to furnish security

(1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security; costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI COMMISSIONS

Commissions to examine witnesses

Order XXVI Rule 1. Cases in which Court may issue commission to examine witness

Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

[1][Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation.-The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.]

[1] Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

Order XXVI Rule 2. Order for commission

An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Order XXVI Rule 3. Where witness resides within Court's jurisdiction

A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Order XXVI Rule 4. Persons for whose examination commission may issue

(1) Any Court may in any suit issue a commission [1][for the examination on interrogatories or otherwise of-]

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) [2][any person in the service of the Government] who cannot in the opinion of the Court, attend without detriment to the public service:

[3][Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.]

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

[1] Subs. by s. 75, ibid., for "for the examination of" (w.e.f. 1-2-1977).

[2] Subs. by the A.O 1937, for "any civil or military officer of the Government".

[3] Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

Order XXVI Rule 4A. Commission for examination of any person resident within the local limits of the jurisdiction of the Court

[1][Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.]

[1] Ins. by Act 46 of 1999, s. 29 (w.e.f. 1-7-2002).

Order XXVI Rule 5. Commission or request to examine witness not within India

Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within [1][India] is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XXVI Rule 6. Court to examine witness pursuant to Commission

Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Order XXVI Rule 7. Return of commission with depositions of witnesses

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the returned thereto and the evidence taken under it shall [1][(subject to the provisions of rule 8)] from part of the record of the suit.

[1] Subs. by Act 104 of 1976, s. 75, for certain words (w.e.f. 1-2-1977).

Order XXVI Rule 8. When depositions may be read in evidence

Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless-

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a [1][person in the service of the Government] who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

[1] Subs. by the A.O. 1937, for "civil or military officer of the Government".

Commissions for local investigations

Order XXVI Rule 9. Commissions to make local investigations

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Order XXVI Rule 10. Procedure of Commissioner

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit.-The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Commissioner may be examined in person.-Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

[1][Commissions for scientific investigation, performance of ministerial act and sale of movable property

[1] Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

Order XXVI Rule 10A. Commission for scientific investigation

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Order XXVI Rule 10B. Commission for performance of a ministerial act

(1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Order XXVI Rule 10C. Commission for the sale of movable property

(1) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.]

Commissions to examine accounts

Order XXVI Rule 11. Commission to examine or adjust accounts

In any suit in which an examination or adjustment of the accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Order XXVI Rule 12. Court to give Commissioner necessary instructions

(1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) Proceedings and report to be evidence. Court may direct further inquiry.-The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Commissions to make partitions

Order XXVI Rule 13. Commission to make partition of immovable property

Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Order XXVI Rule 14. Procedure of Commissioner

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions

Order XXVI Rule 15. Expenses of commission to be paid into court

Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Order XXVI Rule 16. Powers of commissioners

Any commissioner appointed under this Order may, unless otherwise directed by the order of appointment,-

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

Order XXVI Rule 16A. Questions objected to before the Commissioner

[1][(1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.]

[1] Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

Order XXVI Rule 17. Attendance and examination of witnesses before Commissioner

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of [1][India], and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:

[2][Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.]

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits or whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".
[2] Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

Order XXVI Rule 18. Parties to appear before Commissioner

(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

Order XXVI Rule 18A. Application of order to execution proceedings

[1][The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order.

[1] Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

Order XXVI Rule 18B. Court to fix a time for return of commission

The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.]

Commissions issued at the instance of foreign Tribunals

Order XXVI Rule 19. Cases in which High Court may issue commission to examine witness

(1) If a High Court is satisfied.-

(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)-

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or

(c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding.

Order XXVI Rule 20. Application for issue of commission

The High Court may issue a commission under rule 19-

(a) upon application by a party to the proceeding before the foreign court, or

(b) upon an application by a law officer of the State Government acting under instructions from the State Government.

Order XXVI Rule 21. To whom commission may be issued

A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where [1]*** the witness resides within the

local limits of [2][the ordinary original civil jurisdiction of the High Court], to any person whom the Court thinks fit to execute the commission.

[1] The words "the high Court is established under the Indian High Courts Act 1861, or the Government of India Act, 1915, and" omitted by the A.O. 1937.

[2] Subs. by the A.O. 1937 for "its ordinary original civil jurisdiction".

Order XXVI Rule 22. Issue, execution and return of commissions, and transmission of evidence to foreign Court

The provisions of rules 6, 15, [1][sub-rule (1) of rule 16A, 17, 18 and 18B] of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the letter of request for transmission to the foreign court].

[1] Subs. by Act 104 of 1976, s. 75, for "16, 17 and 18" (w.e.f. 1-2-1977).

ORDER XXVII Suits by or against the government or public officers in their official capacity

Order XXVII Rule 1. Suits by or against Government

In any suit by or against [1][the Government], the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

[1] Subs. by A.O. 1937, for "the Secretary of State for India in Council".

Order XXVII Rule 2. Persons authorised to act for Government

Persons being ex officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Order XXVII Rule 3. Plaints in suits by or against Government

In suits by or [1][against the Government], instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert [2][the appropriate name as provided in section 79

[3]***.]

[1] Subs. ibid., for "against the Secretary of State for India in Council".
[2] Subs. by A.O. 1937, for "the Secretary of State for India in Council".
[3] The words 'or' if the suit is against the Secretary of State, the words "the Secretary of State" omitted by the A.O. 1948.

Order XXVII Rule 4. Agent for Government to receive process

[1][The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court].

[1] Subs. by the A.O. 1937, for rule 4.

Order XXVII Rule 5. Fixing of day for appearance on behalf of Government

The Court, in fixing the day for [1][the Government] to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the [2][Government pleader] to appear and answer on behalf of [3][the Government] [4]***, and may extend the time at its discretion [5][but the time so extended shall not exceed two months in the aggregate].

[1] Subs. by A.O. 1937, for "the Secretary of State for India in Council".
[2] Subs. by the A.O. 1950, for "Crown pleader" which had been subs. by the A. O. 1937, for "Government pleader".
[3] Subs. by the A.O. 1937, for "the said Secretary of State, for India in Council".
[4] The words "or the Government," omitted by the A. O. 1948.
[5] Ins. by Act 104 of 1976, s. 76 (w.e.f. 1-2-1977).

Order XXVII Rule 5A. Government to be joined as a party in a suit against a public officer

[1][Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

[1] Ins. by Act 104 of 1976, s. 76 (w.e.f. 1-2-1977).

Order XXVII Rule 5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement

(1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage, it appears to the court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.]

Order XXVII Rule 6. Attendance of person able to answer questions relating to suit against Government

The Court may also, in any case in which the [1][Government pleader] is not accompanied by any person on the part of [2][the Government] who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

[1] Subs. by the A.O. 1950, for "Crown pleader" which had been subs. by the A. O. 1937, for "Government pleader".
[2] Subs. by the A.O. 1937, for "the Secretary of State for India in Council".

Order XXVII Rule 7. Extension of time to enable public officer to make reference to Government

(1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

Order XXVII Rule 8. Procedure in suits against public officer

(1) Where the Government undertakes the defence of a suit against a public officer, the [1][Government pleader] upon being furnished with authority to appear and answer the plaint, shall apply to the court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the [1][Government pleader] on or before the day fixed in the

notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

[1] Subs. by the A.O. 1950, for "Crown pleader" which had been subs. by the A. O. 1937, for "Government pleader".

Order XXVII Rule 8A. No security to be required from Government or a public officer in certain cases

[1][No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act

alleged to be done by him in his official capacity. | ,

[1] Ins. by the A.O. 1937.

Order XXVII Rule 8B. Definitions of "Government" and "Government pleader"

In this Order [1][unless otherwise expressly provided] "Government" and [2]["Government pleader"] mean respectively-

(a) in relation to any suit by or against [3]*** the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this order;

[4]* * * * *

(c) in relation to any suit by or against State Government or against a public officer in the service of a State, the State Government and the Government pleader [1][as defined in clause (7) of section 2], or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.]

State Amendment

Uttar Pradesh

Amendment of Order XXVII.- In the First Schedule, in Order XXVII -

(a) in the marginal heading after the words "official capacity" the words "or Statutory Authorities, etc." shall be inserted ;

(b) after rule 9, as inserted by the Allahabad High Court, the following rule shall be inserted, namely :-

"10. Suits by or against statutory authorities -

(1) Any authority or Corporation, constituted by or under any law, may, from time to

time appoint a Standing Counsel, to be called corporation pleader of that authority, in any district and give information of such appointment to the District Judge.

(2) The Corporation pleader so appointed shall be the agent in that district of the appointing authority or Corporation for purposes of receiving processes against it, but shall not act or plead without filing a Vakalatnama or memorandum of appearance."

[Vide Uttar Pradesh Act 56 of 1976, s. 11]]

[1] Ins. by the A.O. 1950.

[2] Subs. by the A.O. 1950, for "Crown pleader" which had been subs. by the A. O. 1937, for "Government pleader".

[3] The words "the Secretary of State or" omitted by the A.O.1948.

[4] Cl. (b) omitted by the A.O. 1948.

ORDER XXVII A validity of any statutory instrument

Order XXVIIA Rule 1. Notice to the Attorney General or the Advocate-General

In any suit in which it appears to the Court that [1][any such question as is referred to [2][in clause (1) of Article 132, read with Article 147 of the Constitution,] is involved, the Court shall not proceed to determine that question until after notice has been given to [3][the Attorney General for India] if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government.

[1] Subs. by the A.O. 1948, for "substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder".

[2] Subs. by the A.O. 1950, "In sub-section (1) of section 205 of the Government of India Act, 1935".

[3] Subs. ibid., for "the Advocate-General of India".

Order XXVIIA Rule 1A. Procedure in suits involving validity of any statutory instrument

[1][In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule l, is involved, the Court shall not proceed to determine that question except after giving notice-

(a) to the Government pleader, if the question concern the Government, or

(b) to the authority which issued the statutory instrument, if the question concerns an authority other than

Government.]

[1] Ins. by Act 104 of 1976, s. 77 (w.e.f. 1-2-1977).

Order XXVIIA Rule 2. Court may add Government as party

The Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving [1][any such question as is referred to [2][in clause (1) of Article 132 read with Article 147, of the Constitution]], if [3][the Attorney General for India] or the Advocate-General of the State, as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

[1] Subs. by the A. O. 1948, for "a substantial question of law as to the interpretation of the Government of India Act, 1935 or any Order-in-Council made thereunder".

[2] Subs. by the A.O. 1950, for "in sub-section (1) of section 205 of the Government of India Act, 1935".

[3] Subs., ibid., for "the Advocate-General of India".

Order XXVIIA Rule 2A. Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument

[1][The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule lA or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.]

[1] Ins. by Act 104 of 1976, s. 77 (w.e.f. 1-2-1977).

Order XXVIIA Rule 3. Costs

[1][Where, under rule 2 or rule 2A the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General, or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.]

[1] Subs. by Act 104 of 1976, s. 77, for rule 3 (w.e.f. 1-2-1977).

Order XXVIIA Rule 4. Application of Order to appeals

In the application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.

[1][Explanation.-In this Order, "statutory instrument" means a rule, notification, bye-law, order, scheme or form made as specified under any enactment.]

[1] Ins. by Act 104 of 1976, s. 77 (w.e.f. 1-2-1977).

ORDER XXVIII Suits by or against military or naval men or airmen

Order XXVIII Rule 1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them

(1) Where any officer, [1][soldier, [2][sailor] or airman] actually [3][serving under the Government] in [4][such] capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be writing and shall be signed by the officer, [1][soldier, [2][sailor] or airman] in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, [1][soldier, [2][sailor] or airman,] is serving in military, [5][naval], [6][or air force] staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, [1][soldier [2][, sailor] or air man] by whom it was granted could not obtain leave of absence for the purpose of prosecuting of defending the suit in person.

Explanation.-In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, [5][ship,] detachment or depot to which the officer, [1][soldier [2][, sailor] or airman] belongs.

[1] Subs. by s. 2, ibid., and Sch. I, for "or soldier" and "or a soldier".

[2] Ins. by Act 35 of 1934, s. 2 and Sch.

[3] Subs. by the A.O. 1937, for "serving the Government".
[4] Subs. by Act 35 of 1934, s. 2 and Sch., for "a military or air force".
[5] Ins. by Act 35 of 1934, s. 2 and Sch.
[6] Ins. by Act 10 of 1927, s. 2 and the Sch.

Order XXVIII Rule 2. Person so authorised may act personally or appoint pleader

Any person authorised by an officer, [1][soldier [2][, sailor] or airman] to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, [1][soldier [2][, sailor] or airman] could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, [1][soldier [2][, sailor] or airman].

[1] Subs. by s. 2, ibid., and Sch. I, for "or soldier" and "or a soldier".
[2] Ins. by Act 35 of 1934, s. 2 and Sch.

Order XXVIII Rule 3. Service on person so authorised, or on his pleader, to be good service

Processes served upon any person authorised by an officer [1][soldier [2][, sailor] or airman] under rule 1 or upon any pleader appointed as aforesaid by such person shall he as effectual as if they had been served on the party in person.

[1] Subs. by s. 2, ibid., and Sch. I, for "or soldier" and "or a soldier".
[2] Ins. by Act 35 of 1934, s. 2 and Sch.

ORDER XXIX Suits by or against corporations

Order XXIX Rule 1. Subscription and verification of pleading

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Order XXIX Rule 2. Service on corporation

Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Order XXIX Rule 3. Power to require personal attendance of officer of corporation

The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

State Amendment

Uttar Pradesh

Amendment of Order XXIX.- In the First Schedule, in Order XXIX, in rule 2, after clause (a), the following clause shall be inserted, namely :-

"(aa) on its corporation pleader in the district where the Court issuing summons is located, if one has been appointed and the appointment has been notified to the District Judge under rule 10 of Order XXVII, or."

[Vide Uttar Pradesh Act 57 of 1976, s. 12]

ORDER XXX Suits by or against firms and persons carrying on business in names other than their own

Order XXX Rule 1. Suing of partners in name of firm

(1) Any two or more persons claiming or being liable as partners and carrying on business in, [1][India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff of the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XXX Rule 2. Disclosure of partners' names

(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

[1][Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.]

[1] Subs. by Act 104 of 1976, s. 78, for the proviso (w.e.f. 1-2-1977).

Order XXX Rule 3. Service

Where persons are sued as partners in the name of their firm, the summons shall be served either-

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within [1][India] upon any person having, at the time of service, the control or management of the partnership business, there, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without [1][India]:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within [1][India] whom it is sought to make liable.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XXX Rule 4. Rights of suit on death of partner

(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have-

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Order XXX Rule 5. Notice in what capacity served

Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Order XXX Rule 6. Appearance of partners

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

Order XXX Rule 7. No appearance except by partners

Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Order XXX Rule 8. Appearance under protest

[1][(1) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(2) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person

was a partner of the firm and liable as such.

(3) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(4) If the Court, however, holds that such person was not a partner of the firm and was not liable as such that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.]

[1] Subs. by Act 104 of 1976, s. 78, for rule 8 (w.e.f. 1-2-1977).

Order XXX Rule 9. Suits between co-partners

This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Order XXX Rule 10. Suit against person carrying on business in name other than his own

[1][Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.]

[1] Subs. by s. 78, ibid., for rule 10 (w.e.f. 1-2-1977).

ORDER XXXI Suits by or against trustees, executors and administrators

Order XXXI Rule 1. Representation of beneficiaries in suits concerning property vested in trustees, etc

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Order XXXI Rule 2. Joinder of trustees, executors and administrators

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside [1][India], need not be made parties.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XXXI Rule 3. Husband of married executrix not to join

Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

ORDER XXXII Suits by or against minors and persons of unsound mind

Order XXXII Rule 1. Minor to sue by next friend

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

[1][Explanation.-In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875) where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter.]

[1] Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

Order XXXII Rule 2. Where suit is instituted without next friend, plaint to be taken off the file

(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

Order XXXII Rule 2A. Security to be furnished by next friend when so ordered

[1][(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

[1] Ins. by s. 79, ibid. (w.e.f. 1-2-1977).

Order XXXII Rule 3. Guardian for the suit to be appointed by Court for minor defendants

(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice [1]*** to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian [2][upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is [2][no father, mother or other natural guardian], to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

[3][(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.]

[4][(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.]

[1] The words "to the minor and" omitted by Act 104 of 1976, s. 79. (w.e.f. 1-2-1977).
[2] Subs. by s. 79, ibid., for certain words (w.e.f. 1-2-1977).
[3] Ins. by s. 79, ibid. (w.e.f. 1-2-1977).
[4] Ins. by Act 16 of 1937, s. 2.

Order XXXII Rule 3A. Decree against minor not to be set aside unless prejudice has been caused to his interest

[1][(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reasons of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

[1] Ins. by s. 79, ibid. (w.e.f. 1-2-1977).

Order XXXII Rule 4. Who may act as next friend or he appointed guardian for the suit

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent [1][in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its

officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested [1][or out of the property of the minor], and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

[1] Ins. by s. 79, ibid. (w.e.f. 1-2-1977).

Order XXXII Rule 5. Representation of minor by next friend or guardian for the suit

(1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Order XXXII Rule 6. Receipt by next friend or guardian for the suit of property under decree for minor

(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either-

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application :

[1][Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian-

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.]

[1] Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

Order XXXII Rule 7. Agreement or compromise by next friend or guardian for the suit

(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

[1][(1A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor :

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is, for the benefit of the minor.]

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor:

[1] Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

Order XXXII Rule 8. Retirement of next friend

(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in this place, and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

Order XXXII Rule 9. Removal of next friend

(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within [1][India], or for any other sufficient cause, application, may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

[1] Subs. by Act 2 of 1951, s. 3. for "the States".

Order XXXII Rule 10. Stay of proceedings on removal, etc., of next friend

(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new 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.

Order XXXII Rule 11. Retirement, removal or death of guardian for the suit

(1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit, retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Order XXXII Rule 12. Course to be followed by minor plaintiff or applicant on attaining majority

(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where be elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:

"A.B., late a minor by C.D., his next friend, but now having attained majority.".

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Order XXXII Rule 13. Where minor co-plaintiff attaining majority desires to repudiate suit

(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Order XXXII Rule 14. Unreasonable or improper suit

(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such

unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Order XXXII Rule 15. Rules 1 to 14 (Except rule 2A) to apply to persons of unsound mind

[1][Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing being sued.]

[1] Subs. by Act 104 of 1976, s. 79, for rule 15 (w.e.f. 1-2-1977).

Order XXXII Rule 16. Savings

[1][(1) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

(2) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.]

[1] Subs. by Act 104 of 1976, s. 79, for rule 16 (w.e.f. 1-2-1977).

ORDER XXXII-A Suits relating to matters concerning the family

Order XXXIIA Rule 1. Application of the Order

(1) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:-

(a) a suit or proceeding for matrimonial relief, including a suit or proceedings for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding for a declaration as to legitimacy of any person;

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which, the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

Order XXXIIA Rule 2. Proceedings to be held in camera

In every suit or proceeding to which this Order applies, the proceedings may be held in camera if the Court so desires and shall be so held if either party so desires.

Order XXXIIA Rule 3. Duty of Court to make efforts for settlement

(1) In every suit or proceeding to which this Order applied, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement. In respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

Order XXXIIA Rule 4. Assistance of welfare expert

In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in

discharging the functions imposed by rule 3 of this Order.

Order XXXIIA Rule 5. Duty to enquire into facts

In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

Order XXXIIA Rule 6. "Family"

meaning of.-For the purposes of this Order, each of the following shall be treated as constituting a family, namely:-

(a) (i) a man and his wife living together,

(ii) any child or children, being issue of theirs; or of such man or such wife,

(iii) any child or children being maintained by such man and wife;

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

(c) a women not having it husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

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

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation.-For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in another law for the time being in force.]

ORDER XXXIII Suits by indigent persons

Order XXXIII Rule 1. Suits may be instituted by [1][indigent persons.]

Subject to the following provisions, any suit may be instituted by an [1][indigent person].

[2][Explanation I.-A person is an indigent person,-

(a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II.-Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III-Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.]

[1] Subs. by s. 81, ibid., for "pauper" (w.e.f. 1-2-1977).

[2] Subs. by s. 81, ibid., for the Explanation (w.e.f. 1-2-1977).

Order XXXIII Rule 1A. Inquiry into the means of an indigent person

[1][Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.]

[1] Ins. by s. 81, ibid. (w.e.f. 1-2-1977).

Order XXXIII Rule 2. Contents of application

Every application for permission to sue as an [1][indigent person] shall contain the particulars required in regard to plaints in suits: a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

[1] Subs. by s. 81, ibid., for "pauper" (w.e.f. 1-2-1977).

Order XXXIII Rule 3. Presentation of application

Notwithstanding anything contained in these rules the application shall be presented to the Court by the applicant, in person, unless he is exempted from appearing in Court, in which case the application may be presented by an

authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person:

[1][Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.]

[1] Ins. by Act 104 of 1976, s. 81 (w.e.f. 1-2-1977).

Order XXXIII Rule 4. Examination of applicant

(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent regarding the merits of the claim and the property of the applicant.

(2) If presented by agent, Court may order applicant to be examined by commission.-Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

Order XXXIII Rule 5. Rejection of application

The Court shall reject an application for permission to use as [1][an indigent person]-

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not [1][an indigent person], or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to use as [1][an indigent person]:

[2][Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.] or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter; [2][or]

[2][(f) where the allegations, made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.]

[1] Subs. by s. 81, ibid., for "pauper" (w.e.f. 1-2-1977).

[2] Ins. by Act 104 of 1976, s. 81 (w.e.f. 1-2-1977).

Order XXXIII Rule 6. Notice of day for receiving evidence of applicant's indigency

Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten day's clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.

Order XXXIII Rule 7. Procedure at hearing

[1](1) On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall may [2][a full record of their evidence].

[3][(1A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court [4][under rule 6 or under this rule], the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as [5][an indigent person].

[1] The provisions of this rule so far as it relates to the making of a memorandum are not applicable to the Chief Court of Oudh, see Oudh Courts Act, 1925 (U.P. Act 4 of 1925), s. 16 (2).

[2] Subs. by s. 81, ibid., for "a memorandum of the substance of their evidence" (w.e.f. 1-2-1977).

[3] Ins. by Act 104 of 1976, s. 81 (w.e.f. 1-2-1977).

[4] Subs. by s. 81, ibid., for "as herein provided" (w.e.f. 1-2-1977).

[5] Subs. by Act 104 of 1976, s. 81, for "pauper" (w.e.f. -2-1977).

Order XXXIII Rule 8. Procedure if application admitted

Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee [1][or fees payable for service of process] in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

[1] Subs. by s. 81, ibid., for "other than fees pay able for service of process" (w.e.f. 1-2-1977).

Order XXXIII Rule 9. Withdrawal of permission to sue as an [1][indigent person]

The Court may, on the application of the defendant, or of the Government pleader, of which seven days, clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn-

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as [1][an indigent person]; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

[1] Subs. by Act 104 of 1976, s. 81, for "pauper" (w.e.f. -2-1977).

Order XXXIII Rule 9A. Court to assign a pleader to an unrepresented indigent person

[1][(1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court-may, if the circumstances of the case so require, assign a pleader to him.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders to be assigned under sub-rule (1);

(b) the facilities to be provided to such pleaders by the Court ;

(c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).]

[1] Ins. by s. 81, ibid. (w.e.f. 1-2-1977).

Order XXXIII Rule 10. Costs where [1][indigent person] succeeds

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as [1][an indigent person]; such amount shall be recoverable by the [2][State Government] from any party ordered by the decree to pay the same and shall be a first charge, on the subject-matter of the suit.

[1] Subs. by Act 104 of 1976, s. 81, for "pauper" (w.e.f. -2-1977).

[2] Subs. by the A.O. 1950, for "Provincial Government" which had been subs. by the A.O. 1937, for "Government".

Order XXXIII Rule 11. Procedure where [1][indigent person] fails

Where the plaintiff fails in the suit or the permission granted to him to sue as an [1][indigent person] has been withdrawn, or where the suit is withdrawn or dismisses,-

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service [2][or to present copies of the plaint or concise statement], or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as [1][an indigent person].

[1] Subs. by Act 104 of 1976, s. 81, for "pauper" (w.e.f. -2-1977).

[2] Ins. by s. 81, ibid. (w.e.f. 1-2-1977).

Order XXXIII Rule 11A. Procedure where [1][indigent person] suit abates

[2][Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as [1][an indigent person] shall be recoverable by the State Government from the estate of the deceased plaintiff.]

[1] Subs. by Act 104 of 1976, s. 81, for "pauper" (w.e.f. -2-1977).

[2] Ins. by Act 24 of 1942, s. 2.

Order XXXIII Rule 12. State Government may apply for payment of court-fees

The [1][State Government] shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or [2][rule 11A].

[1] Subs. by the A.O. 1950, for "Provincial Government" which had been subs. by the A.O. 1937, for "Government".
[2] Subs. by s. 2, ibid., for "or rule 11".

Order XXXIII Rule 13. State Government to be deemed a party

All matters arising between the [1][State Government] and any party to the suit under rule 10, rule 11, [2][rule 11A] or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

[1] Subs. by the A.O. 1950, for "Provincial Government" which had been subs. by the A.O. 1937, for "Government".
[2] Subs. by s. 2, ibid., for "or rule 11".

Order XXXIII Rule 14. Recovery of amount of court-fees

[1][Where an order is made under rule 10, rule 11 or rule 11A, the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear or land revenue.]

[1] Subs. by Act 104 of 1976, s. 2 for the rule 14.

Order XXXIII Rule 15. Refusal to allow applicant to sue as [1][an indigent person] to bar subsequent application of like nature

An order refusing to allow the applicant to sue as [1][an indigent person] shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right;

[2][provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow,] the costs (if any) incurred by the [3][State Government] and by the opposite party in opposing his application for leave to sue as [1][an indigent person].

[1] Subs. by s. 81, ibid., for "pauper" (w.e.f. 1-2-1977).
[2] Subs. by s. 81, ibid., for "provided that he first pays" (w.e.f. 1-2-1977).
[3] Subs. by the A.O. 1950, for "Provincial Government" which had been subs. by the A.O. 1937, for "Government".

Order XXXIII Rule 15A. Grant of time for payment of court-fee

[1][Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in [2]*** rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.]

[1] Ins. by Act 104 of 1976, s. 81. (w.e.f. 1-2-1977).
[2] Omitted by Act 19 of 1988, s. 3 and the Second Schedule.

Order XXXIII Rule 16. Costs

The costs of an application for permission to sue as [1][an indigent person] and of an inquiry into indigency shall be costs in the suit.

[1] Subs. by s. 81, ibid., for "pauper" (w.e.f. 1-2-1977).

Order XXXIII Rule 17. Defence by an indigent person

[1][Any defendant, who desire to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.

[1] Ins. by s. 81, ibid. (w.e.f. .1-2-1977).

Order XXXIII Rule 18. Power of Government to provide for free legal services to indigent persons

(1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.

(2) The High Court may, with the previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent

persons referred to in sub-rule (1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which, such services may be rendered.]

ORDER XXXIV Suits relating to mortgages of immovable property

Order XXXIV Rule 1. Parties to suits for foreclosure sale and redemption

Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation.-A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

Order XXXIV Rule 2. Preliminary decree in foreclosure suit

[1][(1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree-

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for-

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing-

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the

property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

[1] Subs by Act 21 of 1929, s. 4, for the rules 2 to 8.

Order XXXIV Rule 3. Final decree in foreclosure suit

(1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary,-

(b) ordering him to re-transfer at the cost or the defendant the mortgaged property as directed in the said decree, and also, if necessary,-

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the

plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him or debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Order XXXIV Rule 4. Preliminary decree in suit for sale

(1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Power to decree sale in foreclosure suit.-In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit foreclosure in which sale is ordered, subsequent mortgages or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11 as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Order XXXIV Rule 5. Final decree in suit for sale

(1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary,-

(b) ordering him to transfer the mortgaged property as directed in the said decree, and, also, if necessary,-

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

Order XXXIV Rule 6. Recovery of balance due on mortgage in suit for sale

Where the net proceeds of any sale held under [1][rule 5] are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

[1] Subs. by Act 104 of 1976, s. 82, for "the last preceding rule" (w.e.f. 1-2-1977).

Order XXXIV Rule 7. Preliminary decree in redemption suit

(1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree-

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for-

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing-

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff at his cost free from the mortgage and from all encumbrances created by the defendant or any person claiming under him where the defendant claims by derived title, by those under whom the claims, and shall also, if necessary put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree-

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgage property, be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Order XXXIV Rule 8. Final decree in redemption suit

(1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order-

(a) ordering the defendant to delivery up the documents referred to in the preliminary decree,

and, if necessary,-

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and, also, if necessary,-

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,-

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to

in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

Order XXXIV Rule 8A. Recovery of balance due on mortgage in suit for redemption

[1][Where the net proceeds of any sale held under [2][rule 8] are found insufficient to pay the amount due to the defendant, the Court, [3][on application by him in execution], may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.]

[1] Ins. by Act 21 of 1929, s. 5.
[2] Subs. by Act 104 of 1976, s. 82, for "the last preceding rule" (w.e.f. 1-2-1977).
[3] Subs. by s. 82, ibid., for "on application by him" (w.e.f. 1-2-1977).

Order XXXIV Rule 9. Decree where nothing is found due or where mortgagee has been overpaid

Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so require, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

Order XXXIV Rule 10. Costs of mortgagee subsequent to decree

[1][In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment:]

[2][Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not subsequently deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.]

[1] Subs. by Act 21 of 1929, s. 6, for rule 10.
[2] Ins. by Act 104 of 1976, s. 82 (w.e.f. 1-2-1977).

Order XXXIV Rule 10A. Power of Court to direct mortgagee to pay mesne profits

[1][Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum due on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit].

[1] Ins. by Act 104 of 1976, s. 82 (w.e.f. 1-2-1977).

Order XXXIV Rule 11. Payment of interest

In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:-

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage-

(i) on the principal amount found or declared due on the mortgage,-at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court Deems reasonable,

[1]* * * * *and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,-at the rate agreed between the parties or, failing such rate, [2][at such rate not exceeding six per cent per annum as the Court deems reasonable]; and

[3][(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable.]]

[1] Sub-clause (ii) omitted by Act 66 of 1956, s. 14 (w.e.f. 1-1-1957).
[2] Subs. by s. 14, ibid., for certain words (w.e.f. 1-1-1957).
[3] Subs. by s. 14, ibid., for clause (b) (w.e.f. 1-1-1957).

Order XXXIV Rule 12. Sale of property subject to prior mortgage

Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property- be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Order XXXIV Rule 13. Application of proceeds

(1) Such proceeds shall be brought into Court and applied as follows:-

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment in all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, than two, to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882 (4 of 1882).

Order XXXIV Rule 14. Suit for sale necessary for bringing mortgaged property to sale

(1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882 (4 of 1882), has not been extended.

Order XXXIV Rule 15. Mortgages by the deposit of title deeds and charges

[1][[2][(1)] All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882 (4 of 1882);

[3][(2) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.]

[1] Subs. by Act 21 of 1929, s. 7, for rule 15.
[2] Rule 15 renumbered as sub-rule (1) by Act 104 of 1976, s. 82 (w.e.f. 1-2-1977).
[3] Ins. by s. 82, ibid. (w.e.f. 1-2-1977).

ORDER XXXV INTERPLEADER

Order XXXV Rule 1. Plaint in interpleader suit

In every suit of interpleader the plaint shall, in addition to the other statements necessary for plaints, state-

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

Order XXXV Rule 2. Payment of thing claimed into Court

Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

Order XXXV Rule 3. Procedure where defendant is suing plaintiff

Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be

provided for in such suit; but if and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Order XXXV Rule 4. Procedure at first hearing

(1) At the first hearing the Court may-

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admission of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct-

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary, manner.

Order XXXV Rule 5. Agents and tenants may not institute interpleader suits

Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute in interpleader-suit against A and C.

Order XXXV Rule 6. Charge for plaintiff's costs

Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI SPECIAL CASE

Order XXXVI Rule 1. Power to state case for Court's opinion

(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,-

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Order XXXVI Rule 2. Where value of subject-matter must be stated

Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Order XXXVI Rule 3. Agreement to be filed and registered as suit

(1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed [1][with an application] in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) [2][The application] when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom [3][the application was presented.]

[1] Ins. by Act 104 of 1976, s. 83 (w.e.f. 1-2-1977).
[2] Subs. by s. 83, ibid., for "The agreement" (w.e.f. 1-2-1977).
[3] Subs. by s. 83, ibid., for "it was presented" (w.e.f. 1-2.1977).

Order XXXVI Rule 4. Parties to be subject to Court's jurisdiction

Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Order XXXVI Rule 5. Hearing and disposal of case

(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit-

(a) that the agreement was duly executed by them,

(b) that they have a bona fide interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

Order XXXVI Rule 6. No appeal from a decree passed under rule 5

[1][No appeal shall lie from a decree passed under rule 5.]

[1] Ins. by Act 104 of 1976, s. 83. (w.e.f. 1-2-1977).

ORDER XXXVII SUMMARY PROCEDURE

Order XXXVII Rule 1. Courts and classes of suits to which the Order is to apply

[1][(1) This Order shall apply to the following Courts, namely:-

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts:

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:-

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,-

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.]

[2][(iv) Suit for recovery of receivables instituted by any assignee of a receivable.]

[1] Subs. by s. 84, ibid., for rule 1 (w.e.f. 1-2-1977).
[2] Ins. by the Act 12 of 2012, s. 35 and Sch. (w.e.f. 1-2-1977).

Order XXXVII Rule 2. Institution of summary suits

[1][(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,-

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely :-

"(Under Order XXXVII of the Code of Civil Procedure, 1908)."

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.]

[1] Subs. by Act 104 of 1976, s. 84, for rule 2 (w.e.f. 1-2-1977).

Order XXXVII Rule 3. Procedure for the appearance of defendant

[1][(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,-

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]

[1] Subs. by Act 104 of 1976, s. 84, for rule 3. (w.e.f. 1-2-1977).

Order XXXVII Rule 4. Power to set aside decree

After decree the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Order XXXVII Rule 5. Power to order bill, etc., to be deposited with officer of Court

In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the

plaintiff gives security for the costs thereof.

Order XXXVII Rule 6. Recovery of cost of noting non-acceptance of dishonoured bill or note

The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Order XXXVII Rule 7. Procedure in suits

Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII ARREST AND ATTACHMENT BEFORE JUDGMENT

Arrest before judgment

Order XXXVIII Rule 1. Where defendant may be called upon to furnish security for appearance

Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,-

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,-

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave [1][India] under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XXXVIII Rule 2. Security

(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Order XXXVIII Rule 3. Procedure on application by surety to be discharged

(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Order XXXVIII Rule 4. Procedure where defendant fails to furnish security or find fresh security

Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Order XXXVIII Rule 5. Where defendant may be called upon to furnish security for production of property

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

[1][(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.]

[1] Ins. by Act 104 of 1976, s. 85 (w.e.f. 1-2-1977).

Order XXXVIII Rule 6. Attachment where cause not shown or security not furnished

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Order XXXVIII Rule 7. Mode of making attachment

Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Order XXXVIII Rule 8. Adjudication of claim to property attached before judgment

[1][Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claim to property attached in execution of a decree for the payment of money.]

[1] Subs. by s. 85, ibid., for rule 8 (w.e.f. 1-2-1977).

Order XXXVIII Rule 9. Removal of attachment when security furnished or suit dismissed

Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.

Order XXXVIII Rule 10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale

Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Order XXXVIII Rule 11. Property attached before judgment not to be re-attached in execution of decree

Where property is under attachment by virtue of the provisions of this order decree is subsequently passed in favour

of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

Order XXXVIII Rule 11A. Provisions applicable to attachment

[1][(1) The provisions of this Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.]

[1] Ins. by Act 104 of 1976, s. 85 (w.e.f. 1-2-1977).

Order XXXVIII Rule 12. Agricultural produce not attachable before judgment

Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Order XXXVIII Rule 13. Small Cause Court not to attach immovable property

[1][Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property.]

[1] Ins. by Act 1 of 1926, s. 4.

ORDER XXXIX TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

Order XXXIX Rule 1. Cases in which temporary injunction may be granted

Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [1][defrauding] his creditors,

[2][(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [2][or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

[1] Subs. by Act 104 of 1976, s. 86, for "defraud" (w.e.f. 1-2-1977).
[2] Ins. by s. 86, ibid. (w.e.f. 1-2-1977).

Order XXXIX Rule 2. Injunction to restrain repetition or continuance of breach

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

[1]* * * * *

[1] Sub-rules (3) and (4) omitted by Act 104 of 1976, s. 86 (w.e.f. 1-2-1977).

Order XXXIX Rule 2A. Consequence of disobedience or breach of injunction

[1][(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]

[1] Sub-rules (3) and (4) omitted by Act 104 of 1976, s. 86 (w.e.f. 1-2-1977).

Order XXXIX Rule 3. Before granting injunction, Court to direct notice to opposite party

The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

[1][Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by [2][speed post with registration], immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant, relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

[1] Ins. by s. 86, ibid. (w.e.f. 1-2-1977).

[2] Subs. by Act 37 of 2025, s. 3 and Sch. II for, "registered post" (w.e.f. 20-12-2025).

Order XXXIX Rule 3A. Court to dispose of application for injunction within thirty days

[1][Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.]

[1] Ins. by s. 86, ibid. (w.e.f. 1-2-1977).

Order XXXIX Rule 4. Order for injunction may be discharged, varied or set aside

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

[1][Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.]

[1] Ins. by s. 86, ibid. (w.e.f. 1-2-1977).

Order XXXIX Rule 5. Injection to corporation binding on its officer

An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Order XXXIX Rule 6. Power to order interim sale

The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural delay, or which for any other just and sufficient cause, it may be desirable to have sold at once.

Order XXXIX Rule 7. Detention, preservation, inspection, etc., of subject-matter of suit

(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,-

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the

possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expendient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to persons authorised to enter under this rule.

Order XXXIX Rule 8. Application for such orders to be after notice

(1) An application by the plaintiff for an order under rule 6 or rule 7 may be made [1]*** at any time after institution of the suit.

(2) An application by the defendant for a like order may be made [2]*** at any time after appearance.

[3][(3) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.]

[1] The words "after notice to the defendant" omitted by Act 104 of 1976, s. 86. (w.e.f. 1-2-1977).

[2] The words "after notice to the plaintiff" omitted by s. 86, ibid. (w.e.f. 1-2-1977).

[3] Ins. by s. 86, ibid. (w.e.f. 1-2-1977).

Order XXXIX Rule 9. When party may be put in immediate possession of land the subject-matter of suit

Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possesion of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure, and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Order XXXIX Rule 10. Deposit of money, etc., in Court

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

State Amendment

Uttar Pradesh

Amendment of Order XXXIX.- In the First Schedule, in Order XXXIX -

(a) in rule 2, in sub-rule (2) the following proviso shall be inserted, namely :-

"provided that no such injunction shall be granted -

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963, or

(b) to stay the operation of an order for, transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any employee including any employee of the Government, or

(c) to say, any disciplinary proceeding pending or intended or, the effect of any adverse entry, against any employee of the Government, or

(d) | to affect the internal management or affairs of, any educational institution including a University, or a society, or

(e) to restrain any election, or

(f) to restrain, any auction intended to be made or, the effect of any auction made, by the Government, or

(g) | to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished, or

(h) | in any matter where a reference can be made to the Chancellor of a University under any

enactment for the time being in force ;

and any order for injunction granted in contravention of these provisions shall be void." ;

(b) in rule 4 -

(i) after the words "by the court", the words "for reasons to be recorded, either on its own motion or" shall be inserted ;

(ii) at the end, the following proviso shall be inserted, namely:-

"Provided that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is dilating the proceeding or is otherwise abusing the process of Court, it shall set aside the order for injunction."

[Vide Uttar Pradesh Act 57 of 1976, s. 13]

Uttar Pradesh

Amendment of order XXXIX of First Schedule.- In the First Schedule to the said Code, in Order XXXIX, in rule 2, in sub-rule (2), in the proviso, clause (d) shall be omitted.

[Vide Uttar Pradesh Act 17 of 1991, s. 8]

ORDER XL APPOINTMENT OF RECEIVERS

Order XL Rule 1. Appointment of receivers

(1) Where it appears to the Court to be just and convenient, the Court may by order-

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit. (2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Order XL Rule 2. Remuneration

The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Order XL Rule 3. Duties

Every receiver so appointed shall-

(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

(b) submit his accounts at such periods and in such form as the Court directs;

(c) pay the amount due from him as the Court directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Order XL Rule 4. Enforcement of receiver's duties

Where a receiver-

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

Order XL Rule 5. When Collector may he appointed receiver

Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI APPEALS FROM ORIGINAL DECREES

Order XLI Rule 1. Form of appeal. What to accompany memorandum

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the [1][Judgment].

[2][Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.]

(2) Contents of memorandum.-The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

[2][(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.]

[1] Subs. by Act 46 of 1999, s. 31, for certain words, (w.e.f. 1-7-2002).

[2] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 2. Grounds which may be taken in appeal

The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Order XLI Rule 3. Rejection or amendment of memorandum

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

Order XLI Rule 3A. Application for condonation of delay

[1][(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.]

[1] Ins. by Act 104 of 1976, s. 87. (w.e.f. 1-2-1977).

Order XLI Rule 4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution

Order XLI Rule 5. Stay by Appellate Court

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[1][Explanation.-An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an

affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree.-Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [2][Subject to the provision of sub-rule (3),] the Court may make an ex parte order for stay of execution pending the hearing of the application.

[1][(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

[1] Ins. by Act 104 of 1976, s. 87. (w.e.f. 1-2-1977).

[2] Subs. by s. 87, ibid., for certain words (w.e.f. 1-2-1977).

Order XLI Rule 6. Security in case of order for execution of decree appealed from

(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

Order XLI Rule 7. [1]No security to be required from the Government or a public officer in certain cases

[1]Rep. by the A.O. 1937.

[1] See order XXVII, rule 8A, supra.

Order XLI Rule 8. Exercise of power in appeal from order made in execution of decree

The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal

Order XLI Rule 9. Registry of memorandum of appeal

[1][(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.]

[1] Subs. by Act 46 of 1999, s. 31, for rule 9 (w.e.f. 1-7-2002).

Order XLI Rule 10. Appellate Court may require appellant to furnish security for costs

(1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of India.-Provided that the Court shall demand such security in all cases in which the appellant is residing out of [1][India], and is not possessed of any sufficient immovable property within [1][India] other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

[1] Subs. by Act 2 of 1951, s. 3, for "the States".

Order XLI Rule 11. Power to dismiss appeal without sending notice to Lower Court

[1][(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal].

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

[2][(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.]

[1] Subs. by Act 46 of 1999, s. 31, for sub-rule (1) (w.e.f. 1-7-2002).
[2] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 11A. Time within which hearing under rule 11 should be concluded

[1][Every appeal shall be hear under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.]

[1] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 12. Day for hearing appeal

(1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

[1][(2) Such day shall be fixed with reference to the current business of the Court.]

[1] Subs. by Act 46 of 1999, s. 31, for sub-rule (2) (w.e.f. 1-7-2002).

Order XLI Rule 13. Appellate Court to give notice to Court whose decree appealed from

[Appellate Court to give notice to Court whose decree appealed from.] Omitted by Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 31 (w.e.f. 1-7-2002.)

Order XLI Rule 14. Publication and service of notice of day for hearing appeal

(1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Appellate Court may itself cause notice to be served.-Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

[1][(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.]

[1] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 15. Contents of notice

[Contents of notice.] Omitted by Code of Civil Procedure (Amendment) Act 1999, (46 of 1999), s. 31 (w.e.f. 1-7-2002.)

Procedure on hearing

Order XLI Rule 16. Right to begin

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Order XLI Rule 17. Dismissal of appeal for appellants' default

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

[1][Explanation.-Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.]

(2) Hearing appeal ex parte.-Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

[1] The words "or rule 18" omitted by Act 46 of 1999, s. 31(w.e.f. 1-7-2002).

Order XLI Rule 18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost

[Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.] Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) s. 31 (w.e.f. 1-7-2002).

Order XLI Rule 19. Re-admission of appeal dismissed for default

Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 [1][***] the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was, called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

[1] The words "or rule 18" omitted by Act 46 of 1999, s. 31(w.e.f. 1-7-2002).

Order XLI Rule 20. Power to adjourn hearing and direct persons appearing interested to be made respondents

[1][(1)] Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

[2][(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.]

[1] Rule 20 re-numbered as sub-rule (1) by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).
[2] Ins. by Act 104 of 1976, s. 87. (w.e.f. 1-2-1977).

Order XLI Rule 21. Re-hearing on application of respondent against whom ex parte decree made

Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Order XLI Rule 22. Upon hearing respondent may object to decree as if he had preferred separate appeal

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [1][but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[2]Explanation.-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto.-Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

[3]* * * * *

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

[1] Subs. by s. 87, ibid., for certain words (w.e.f. 1-2-1977).

[2] Ins. by s. 87, ibid. (w.e.f. 1-2-1977).

[3] Subs-rule (3) omitted by Act 46 of 1999, s. 31 (w.e.f. 1-7-2002).

Order XLI Rule 23. Remand of case by Appellate Court

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Order XLI Rule 23A. Remand in other cases

[1][Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

[1] Ins. by s. 87, ibid. (w.e.f. 1-2-1977).

Order XLI Rule 24. Where evidence on record sufficient Appellate Court may determine case finally

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Order XLI Rule 25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [1][within such time as may be fixed by the Appellate Court or extended by it from time to time].

[1] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 26. Findings and evidence to be put on record. Objections to findings

(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal.-After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Order XLI Rule 26A. Order of remand to mention date of next hearing

[1][Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.]

[1] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 27. Production of additional evidence in Appellate Court

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[1][(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

[1] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 28. Mode of taking additional evidence

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Order XLI Rule 29. Points to be defined and recorded

Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in appeal

Order XLI Rule 30. Judgment when and where pronounced

[1][(1)] The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

[2][(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.]

[1] Rule 30 re-numbered as sub-rule (1) by Act 104 of 1976, s. 87. (w.e.f. 1-2-1977).
[2] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

Order XLI Rule 31. Contents, date and signature of judgment

The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Order XLI Rule 32. What judgment may direct

The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in

appeal, the Appellate Court may pass a decree or make an order accordingly.

Order XLI Rule 33. Power of Court of Appeal

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [1][and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

[2][Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

[1] Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

[2] Ins. by Act 9 of 1922, s. 4, which under s. 1(2) thereof, may be brought into force in any State by the State Government on any specified date. The Act has been brought into force in Bombay, Bengal, U.P., Punjab, Bihar, C.P. Assam, Orissa and Tamil Nadu.

Order XLI Rule 34. Dissent to be recorded

Where the Appeal is heard by more judges than one, any judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal

Order XLI Rule 35. Date and contents of decree

[1](1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.-Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

[1] This rule is not applicable to the Chief Court of Oudh in the exercise of its appellate Jurisdiction; see the Oudh Courts Act, 1925 (U.P. 4 of 1925), s. 16(3).

Order XLI Rule 36. Copies of judgment and decree to be furnished to parties

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Order XLI Rule 37. Certified copy of decree to be sent to Court whose decree appealed from

A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

ORDER XLII APPEALS FROM APPELLATE DECREES

Order XLII Rule 1. Procedure

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

Order XLII Rule 2. Power of Court to direct that the appeal be heard on the question formulated by it

[1][At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other

ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.

[1] Ins. by Act 104 of 1976, s. 88 (w.e.f. 1-2-1977).

Order XLII Rule 3. Application of rule 14 of Order XLI

Reference in sub-rule (4) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.]

ORDER XLIII APPEALS FROM ORDERS

Order XLIII Rule 1. Appeal from orders

An appeal shall lie from the following orders under the provisions of section 104, namely:-

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court [1][except where the procedure specified in rule 10A of Order VII has been followed];

[2] * * * * *

(c). an order under rule 9 of order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

[2]* * * * *

(f) an order under rule 21 of Order XI;

[2]* * * * *

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

[3][(ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable;]

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave; [4]* * * * *

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

[3][(na) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;]

[4]* * * * *

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order (XXVIII);

(r) an order under rule 1, rule 2 [3][rule 2A], rule 4 or rule 10 of Order XXXIX;

(s) an order under rule 1, or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order under rule 23 [3][or rule 23A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

[4]* * * * *

(w) an order under rule 4 of Order XLVII granting an application for review.

[1] Ins. by s. 89, ibid (w.e.f. 1-2-1977).

[2] Cls. (b), (e), (g), (h), (m), (o) and (v) omitted by s. 89, ibid, (w.e.f. 1-2-1977).

[3] Ins. by Act 104 of 1976, s. 89 (w.e.f. 1-2-1977).

[4] Clauses (b), (e), (g), (h), (m), (o) and (v) omitted by s. 89, ibid. (w.e.f. 1-2-1977).

Order XLIII Rule 1A. Right to challenge non-appealable orders in appeal against decrees

[1][(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise,

it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.]

[1] Ins. by Act 104 of 1976, s. 89 (w.e.f. 1-2-1977).

Order XLIII Rule 2. Procedure

The rules of Order XLI shall apply, so far as may be, to appeals from orders.

ORDER XLIV APPEALS BY INDIGENT PERSONS

Order XLIV Rule 1. Who may appeal [1][as an indigent person]

[2][(1)] Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an [3][indigent person], subject, in all matters, including the presentation of such application, to the provisions relating to suits by [1][indigent persons], in so far as those provisions are applicable.

[4]* * * * *

[5]* * * * *

[1] Subs. by s. 90, ibid., for "as pauper" (w.e.f. 1-2-1977).

[2] Rule 1 re-numbered as sub-rule (1) by Act 66 of 1956, s. 14.

[3] Subs. by Act 104 of 1976, s. 90, for "pauper" and "paupers" respectively (w.e.f. 1-2-1977),

[4] Proviso omitted by Act 66 of 1956, s. 14.

[5] Sub-rule (2) ins. by s. 14, ibid. and omitted by Act 104 of 1976, s. 90 (w.e.f. 1-2-1977).

Order XLIV Rule 2. Grant of time for payment of court-fee

[1][Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

[1] Subs. by Act 104 of 1976, s. 90, for rule 2 (w.e.f. 1-2-1977).

Order XLIV Rule 3. Inquiry as to whether applicant is an indigent person

(1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government Pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of that Court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.]

ORDER XLV APPEALS TO THE SUPREME COURT

Order XLV Rule 1. "Decree" defined

In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

Order XLV Rule 2. Application to Court whose decree complained of

[1][(1)] Whoever desires to appeal [2][the Supreme Court] shall apply by petition to the Court whose decree is complained of.

[3][(2) Every petition under sub-rule (1) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (1).]

[1] Rule 2 re-numbered as sub-rule (1) of that rule by Act 104 of 1976, s. 91 (w.e.f. 1-2-1977).

[2] Subs. by the A.O. 1950, for "His Majesty in Council".

[3] Ins. by Act 104 of 1976, s. 91 (w.e.f. 1-2-1977).

Order XLV Rule 3. Certificate as to value or fitness

[1][(1) Every petition shall state the grounds of appeal and pray for a certificate-

(i) that the case involves a substantial question of law of general importance, and

(ii) that in the opinion of the Court the said question needs to be decided by the Supreme Court.] (2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

[1] Subs. by Act 49 of 1973, s. 4, for sub-rule (1).

Order XLV Rule 4. Consolidation of suits

[Consolidation of suits.] Rep. by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973), s. 4 (w.e.f. 1-2-1977).

Order XLV Rule 5. Remission of dispute to Court of first instance

[Remission of dispute to Court of first instance.] Rep. by s. 4, ibid. (w.e.f. 1-2-1977).

Order XLV Rule 6. Effect of refusal of certificate

Where such certificate is refused, the petition shall be dismissed.

Order XLV Rule 7. Security and deposit required on grant of certificate

(1) Where the certificate is granted, the applicant shall, within [1][ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow;] from the date of the decree complained of, or within six weeks from the date of the grant of the certificate whichever is the later date,-

(a) furnish security [2][in cash or in Government securities] for the costs of the respondent; and

(b) deposit the amount required to defray the expense of translating, transcribing indexing [3][, printing,] and transmitting to [4][the Supreme Court] a correct copy of the whole record of the suit, except-

(1) formal documents directed to be excluded by any [5][Rule of the Supreme Court] in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded:

[6][Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.]

[7]* * * * *

[1] Subs. by Act 26 of 1920, s. 3, for "six months".
[2] Ins. by s. 3, ibid.
[3] Ins. by the A.O. 1950.
[4] Subs. by the A.O. 1950, for "His Majesty in Council".
[5] Subs., ibid., for "order of His Majesty in Council".
[6] Added by Act 26 of 1920, s. 3.
[7] Sub-rule (2) omitted by the A.O. 1950.

Order XLV Rule 8. Admission of appeal and procedure thereon

Where such security has been furnished and deposit made to the satisfaction of the Court, the court shall-

(a) declare the appeal admitted,

(b) give notice thereof to the respondent,

(c) transmit to [1][the Supreme Court] under the seal of the Court a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore and paying the reasonable expenses incurred in preparing them.

[1] Subs. by the A.O. 1950, for "His Majesty in Council".

Order XLV Rule 9. Revocation of acceptance of security

At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Order XLV Rule 9A. Power to dispense with notices in case of deceased parties

[1][Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the court-house of the Judge of the district in which the suit was originally brought, and by publication in such newspapers as the Court may direct.]

[1] Ins. by Act 26 of 1920, s. 4.

Order XLV Rule 10. Power to order further security or payment

Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to [1][the Supreme Court], such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

[1] Added by Act 26 of 1920, s. 3.

Order XLV Rule 11. Effect of failure to comply with order

Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of, [1][the Supreme Court],

and in the meantime execution of the decree appealed from shall not be stayed.

[1] Added by Act 26 of 1920, s. 3.

Order XLV Rule 12. Refund of balance deposit

When the copy of the record, except as aforesaid, has been transmitted to [1][the Supreme Court], the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

[1] Subs. by the A.O. 1950, for "His Majesty in Council".

Order XLV Rule 13. Powers of Court pending appeal

(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,-

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which [1][the Supreme Court] may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of [2][any decree or order] which [1][the Supreme Court] may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

[1] Subs. by the A.O. 1950, for "His Majesty in Council".

[2] Subs. by the A.O. 1950, for "any order".

Order XLV Rule 14. Increase of security found inadequate

(1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,-

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree, appealed from as if the appellant had furnished no such security;

(b) if the original security was furnished by the respondent, the Court shall so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Order XLV Rule 15. Procedure to enforce orders of the Supreme Court

(1) Whoever desires to obtain execution of [1][any decree or order] of [2][the Supreme Court] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to [2][the Supreme Court] was preferred.

(2) Such Court shall transmit the [3][decree or order] of [2][the Supreme Court] to the Court which passed the first decree appealed from, or to such other Court as [2][the Supreme Court] by such [3][decree or order] may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said [3][decree or order] is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

[4]* * * * *

[5][(4) [6][Unless the Supreme Court otherwise directs, no decree or order of that Court] shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.]

[1] Subs. by the A.O. 1950, for "any order".
[2] Subs. by the A.O. 1950, for "His Majesty in Council".
[3] Subs. by ibid., for "order".
[4] Sub-rule (3) omitted by the A.O. 1950.
[5] Ins. by Act 26 of 1920, s. 5.
[6] Subs. by the A.O. 1950, for "Unless His Majesty in Council is pleased otherwise to direct, no order of His Majesty in Council".

Order XLV Rule 16. Appeal from order relating to execution

The orders made by the Court which executes the [1][decree or order] of [2][the Supreme Court], relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

[1] Subs. ibid., for "order".
[2] Subs. ibid., for "His Majesty in Council".

Order XLV Rule 17. Appeals to Federal Court

[Appeals to Federal Court.] Rep. by the Federal Act, 1941 (21 of 1941), s. 2.

State Amendment

Uttar Pradesh

Amendment of Order XLV. In the First Schedule, in Order XLV, in rule 2, after sub- rule (2), the following sub-rule shall be inserted, namely :-

"(3) Notwithstanding anything contained in sub-rule (1), whoever desires to appeal to the Supreme Court, may apply orally to the Court whose decree is to be complained of, immediately before or

after the pronouncement of the judgment by the Court, for a certificate contemplated in sub-rule (1) of rule 3, and the Court may either grant or refuse the certificate, or direct the applicant to file a petition as required by sub-rule (1) ;

Provided that if an oral application is entertained and rejected, no written petition under sub-rule (1) shall lie."

[Vide Uttar Pradesh Act 56 of 1957, s. 14]

ORDER XLVI REFERENCE

Order XLVI Rule 1. Reference of question to High Court

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Order XLVI Rule 2. Court may pass decree contingent upon decision of High Court

The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred:

But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

Order XLVI Rule 3. Judgment of High Court to be transmitted and case disposed of accordingly

The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Order XLVI Rule 4. Cost of reference to High Court

The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Order XLVI Rule 4A. Reference to High Court under proviso to section 113

[1][The provisions of rules 2, 3 and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1; and]

[1] Ins. by Act 24 of 1951, s. 2.

Order XLVI Rule 5. Power to alter, etc., decree of Court making reference

Where a case is referred to the High Court under rule [1][or under the proviso to section 113], the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

[1] Ins. by Act 24 of 1951, s. 2.

Order XLVI Rule 6. Power to refer to High Court questions as to jurisdiction in small causes

(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Order XLVI Rule 7. Power to District Court to submit for revision proceeding had under mistake as to jurisdiction in small causes

(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII REVIEW

Order XLVII Rule 1. Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was

not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

[1][Explanation.-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

[1] Ins. by Act 104 of 1976, s. 92 (w.e.f. 1-2-1977).

Order XLVII Rule 2. To whom applications for review may be made

[To whom applications for review may be made.] -Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956) s. 14.

Order XLVII Rule 3. Form of applications for review

The provisions as to the form of preferring appeals shall apply, mutatis mutandis, to applications for review.

Order XLVII Rule 4. Application where rejected

(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted.-Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that-

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Order XLVII Rule 5. Application for review in Court consisting of two or more Judges

Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order a review of which is applied for, continues or continued attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Order XLVII Rule 6. Application where rejected

(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

Order XLVII Rule 7. Order of rejection not appealable. Objections to order granting application

[1][(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

[1] Subs. by s. 92, ibid., for sub-rule (1) (w.e.f. 1-2-1977).

Order XLVII Rule 8. Registry of application granted, and order for re-hearings

When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Order XLVII Rule 9. Bar of certain application

No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII MISCELLANEOUS

Order XLVIII Rule 1. Process to be served at expense of party issuing

(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) Costs of service.-The court-fee chargeable for such service shall be paid within a time to be fixed-before the process is issued.

Order XLVIII Rule 2. Orders and notices how served

All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Order XLVIII Rule 3. Use of forms in appendices

The Forms given in the appendices, with such variation as the circumstances or each case may require, shall be used for the purposes therein mentioned.

ORDER XLIX CHARTERED HIGH COURTS

Order XLIX Rule 1. Who may serve processes of High Court

Notice to produce documents, summonses to witnesses, and every other judical process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

Order XLIX Rule 2. Saving in respect of Chartered High Courts

Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

Order XLIX Rule 3. Application of rules

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII;

(2) rule 3 of Order X;

(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rule 1 to 8 of Order XX; and

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum),

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

ORDER L PROVINCIAL. SMALL CAUSE COURTS

Order L Rule 1. Provincial Small Cause Courts

The provisions hereinafter specified shall not extend to Court constituted under the Provincial Small Cause Courts Act 1887 (9 of 1887) [1][or under the Berar Small Cause Courts Law, 1905] or to Courts exercising the jurisdiction of a Court of Small Causes [2][under the said Act or Law] [3][or to Courts in [4][any part of India to which the said Act does not extend] exercising a corresponding jurisdiction that is to say-

(a) so much of this Schedule as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders:-

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, rule 5 to 12 (evidence);

Order XLI, to XLV (appeals);

Order XLVII, rules 2, 3, 5, 6, 7 (review);

Order LI.

State Amendment

Uttar Pradesh

Amendment of the First Schedule.-In the First Schedule to the said Code, in the Order L, in rule 1, in clause (b) for the words and figures "Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment", the words as figures "Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment and rule 5" shall be substituted.

[Vide Uttar Pradesh Act 19 of 1973, s. 3]

[1] Ins. by Act 4 of 1941, s. 2, and Sch. III.

[2] Subs. by s. 2, and Sch. III, ibid., for "under that Act".

[3] Ins. by Act 2 of 1951, s. 18.

[4] Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part B States".

ORDER LI PRESIDENCY SMALL CAUSE COURTS

Order LI Rule 1. Presidency Small Cause Courts

Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), this Schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

Schedules

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