

CHAPTER IV
GENERAL RULES FOR APPLICATIONS AND AFFIDAVITS
APPLICATION

1. Applications to the High Court shall be in the English language.

Note — In the sub-joined Schedule will be found a list specifying applications, verified or unverified, on which Court-fee stamps of Rs. 4 are necessary.

SCHEDULE

Applications relating to the following matters should bear a Court-fee Stamp of Rs. 4:

Subject	Details	Under what rule	Whether affidavit necessary
Court fees	1. Refund of Court fees paid in excess	Section 13, Court fees Act, R. 2(4) Chapter II, of these Rules	Affidavit not necessary
	2. Time to put in requisite Court-fee and refiling of Memo of Appeal after period of limitation.	Clauses (3), (4) and (5) of R.18, Chapter V of these rules.	Do
Minors	3. Substitution of parties (including minors)	Order XXII, Rr.3(1) and 4(1) Civil Procedure Code and R. 2 (5), Chapter II of these rules.	Do
	4. Appointment of	Order XXXII, R.3(2), guardians ad litem Civil Procedure Code and R. 2 (6) Chapter II of these Rules.	Do
	5. Amendment of Memo of Appeal on a minor attaining majority	Rules 26 and 28 Chapter V of these rules	Affidavit necessary except in case of application by appellant when based on affidavit already filed by respondent.
	6. Cancellation of Deputy Regis-	Order XXXII, R. 11, Civil	Affidavit necessary

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		trar's appointment as guardian ad litem.	Procedure Code and R.2(6), Chapter 11, read with R.29, Chapter V of these rules.	
Notice	7	Substituted service	Order V, R. 20, Civil Procedure Code and R. 2(4) Chapter II of these rules.	Do
Paper-book	8	Relaxation of R. 48 (a) Chapter IX of these rules.	Rule 8, Chapter IX of these rules	Do
Supreme Court of India	9	Transmission of orders of Supreme Court of India to Lower Courts for execution and for preparation of certificate of costs.	Rule 14, Chapter VI of these rules read with Article I of Schedule II of the Court-fees Act	Affidavit not necessary
	10	Acceptance of securities other than cash or Government securities	Rule 40, Chapter VI of these rules	Affidavit necessary
	11	Refund of securities	Article 1 of Schedule II of the Court-fees Act.	Affidavit not necessary
	12	Conversion of securities from one form into another	Note to R. 40, Chapter VI of these rules.	Do
	13	Exclusion from or inclusion in transcript record to Supreme Court of papers	Rule 29(iii)(f) Chapter VI of these rules	Do
	14	Return of documents during	Rule 2(10), Chapter II of these rules	Do

General

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| | pendency of appeal | Order XIII, R.9,
Civil Procedure Code | |
| 15 | Requisition for records from lower courts relating to cases other than the appeals pending in the Court. | Rules 19 and 20, Chapter IV of these rules | Affidavit not necessary |
| 16 | Return of exhibits to affidavits or verified petition. | Rule 33(1), Chapter IV of these rules. | Ditto (if document to be returned is original document). |
| 17 | Exemption from production of more than one copy of the judgment in analogous appeal and from payment of a separate set of estimating fee for applications for leave to appeal to Supreme Court of India filed by the same party against the same judgment of this Court. | Order XII, R. 1 (i) (1), Civil Procedure Code, R.3, Chapter V, R.2 (18), Chapter II, and R. 7 Chapter VI of these rules | Affidavit not necessary |
| 18 | Cancellation of vakalatnama | Rule 68, Chapter V of these rules | Affidavit necessary unless Advocate who accepted the vakalatnama signifies his willingness to retire from case. |
| 19 | Amendment of memorandum of appeal consequent on the death of a party including a party whose heirs | Order XXII, Rr. 3 and 4, Civil Procedure Code, and R. 25, Chapter V, read with R. 2(7) Chapter | Affidavit necessary |

are already on record. 11 of these rules.

2. In every application presented to the High Court there should be stated, immediately after the cause title, the section and statute under which the application is made, the date of the order complained of and the value of the subject matter of the suit out of which the application arises.

2A. Every application which involves the issue of a rule or notice on the lower Court or opposite party, shall be accompanied by the number of copies of the application and its enclosures for service on the lower Court and/or the opposite party;

Provided that if the petitioner so desires, the copies referred to in this rule may be filed at the time of putting in the fee for the services of notice under R. 12 of this Chapter.

2B. Every application for revision shall be produced before the Commissioner of Affidavits, who shall satisfy himself that the application is sufficiently stamped and is accompanied by an affidavit and complies with the provisions of Rule 2A above, and shall certify accordingly.¹

3. Every application to the High Court relating to an appeal pending before the Court shall be filed with the Bench Assistant concerned at least 24 hours before the sitting of the Court before which it is proposed to move the application or of the Registrar if the application is entertainable by him. Such applications shall be listed for hearing on the next motion day. No such application which has not been duly listed will be entertained by the Court or the Registrar unless in the special circumstances of the case, the Court or the Registrar otherwise directs.

4. Every application to the High Court, if founded on any statement of fact, shall set out the material facts; matters and circumstances on which the applicant relies.

5. When an application is made to the Court or to the Registrar in any matter in which any previous application was made to the Court or to the Registrar to the same effect, or with the same object, or with a similar object, the fact of such application having been made and the order passed thereon shall be clearly stated in the application.

6. Every such application shall be neatly typed at stout paper of foolscap size with a margin of two inches and shall contain not exceeding thirty lines in each full page. The application shall be divided into paragraphs and numbered consecutively and only one side of the paper shall be used.²

Note 1. Rule 2B has been substituted by Notification No. HC.XI-05/2010/513, dated 05.10.2010

Note 2. Rule 6. In this rule instead of "20 lines", "thirty lines" were substituted vide Notification No. HC-XI 4/65-70/4088 RC dated 8.5.1970, Correction Slip No. 39, to come into force with immediate effect.

7. The facts stated in such application shall be verified by the solemn affirmation of the applicant or by an affidavit to be annexed to the application.³

Note — The affidavit may be by any person having cognizance of the facts stated. Several persons may join in the affidavit, each deposing separately to these facts which are within his own knowledge.

8. Every application shall be signed with the full name and dated either by the applicant or declarant of his Advocate.⁴

9. It will not be necessary to set out in the application or in the affidavit any document which is part of a record present in the High Court, nor will it be necessary to produce any affidavit of any facts found by the High Court or any of the lower Courts in the course of the suit or proceeding out of which the appeal arise; provided that such finding has not been reversed on appeal; but the application shall state shortly all facts upon which it is intended to rely, and shall give the number, letter, title or other description of all documents on the record present in the High Court, to which it is intended to refer.

10. In the case of an application relating to a matter which is or has been before the High Court, the High Court file together with the application shall be placed before the Court or the Registrar at the time of the hearing of the application. When the applicant desires that any documents in a record present in the High Court other than those contained in the High Court file shall be produced at the hearing in order that they may be referred to by the Court, he shall at the time of filing the application give notice to produce them to the Bench Assistant concerned, unless by a special order of the Court or the Registrar, documents will not be produced from the record room or the office during the sitting of the Court.

11. In all cases in which service of notice on the opposite party is necessary,

Note 3: Penalty for swearing false allegation in affidavit — see (1997) 9 SCC 151

Supreme Court's direction regarding affidavit — see (1999) 3 SCC 643

Filing of affidavit of a dead man in the Registry of the Supreme Court — see (1998) 2 SCC 681

Also see *Someswar Gogoi v. State of Assam & Ors.*, (1988) 1 GLR 440. An affidavit enclosed with a Writ Petition containing allegation of mala fide has to be verified by a person having direct knowledge of the acts constituting malice in fact. As to other types of petitions, affidavit should be verified either by the petitioner himself or by anybody else who is fully posted with the facts and circumstances of the case. We would not regard an Advocate's clerk as such a person. The necessity of affidavit by a proper person lies in the fact that after all a Writ Petition is entirely decided on the basis of affidavits filed by the parties and as such to assure the mind of the Court about the correctness of the averments made it would be justified in making an affidavit from a person having full knowledge of the facts of the case. The normal rule of giving the best evidence which is applicable in case of civil suits and criminal trials should apply, according to use, to Writ Petitions as well.

Note 4: Rule 8. The words "with the full name" were added vide Notification No. HC.XI/4/65/70/7520/RC dated 18.8.1970, Correction Slip No. 42.

if such notice has been duly served, the hearing of the application (except in cases of urgency), shall be postponed unless the parties entitled to notice are present and willing to proceed at once. In all cases the parties opposing the application shall be at liberty to apply for a postponement in order to answer the affidavits or for any other good and special cause.

12. The fee for the issue of notice on the opposite party shall be paid into Court within seven days from the date of granting of the application and shall be accompanied by the necessary number of copies of the application and enclosures required for service on the lower Court and the opposite party if such copies were not filed along with the application (*see* R. 2-A of this Chapter]:

Provided that no order shall be passed to receive such fee when tendered out of the time, except upon an application with a Court fee of Rs. 4 setting forth the reasons for condoning delay;

Provided further that subject to any other orders of the Court in cases in which the Court fixes a returnable date, the fee for the issue of notice shall be paid into Court by the end of the day following that on which the application is granted and shall be accompanied by copies of the petition and its enclosure referred to in this rule.⁵

13. Any party opposing the grant of an application or showing cause against, a rule, who may desire to bring before the Court any facts not contained in, or admitted by, the application or affidavit of the opposite party, shall do so by an affidavit containing, in the form of a narrative, the material facts on which he relies.

14. No affidavit in answer shall ordinarily be read which have not been filed with the proper officer of the Court 24 hours before the sitting of the Court or the Registrar on the date fixed for the hearing of the application.

15. No affidavit shall ordinarily be read at the hearing of any appeal, application or other proceeding unless a copy thereof has been served upon the other party or his Advocate 24 hours before such hearing: other party or his Advocate 24 hours before such hearing:

Provided that this rule shall not apply to urgent motions or applications or to

Note 5: Rule 12. In the second proviso to this rule, the words "subject to any other orders of the Court", were added vide Notification No. HC.XI/4/65/70/7520/RC dated 18.8.70, Correction Slip No. 43 and the Note under the original second proviso was deleted which, however, read as follows:

"Note. In fixing a returnable date, at least fifteen days' time should be allowed for service of notice in addition to the time allowed for putting in the fee, etc., for the service of notice under this rule."

motions or applications made *ex parte*.

16. Every application for stay of execution under Order XLI, R.5, Civil Procedure Code, shall specifically state that it is made under that rule, and it shall be accompanied by an affidavit stating specifically the facts upon which the application is based; the date of the decree or order the stay of execution of which is desired; the date, the order, if any, for execution or sale; the date, if any, fixed for the sale; and the facts necessary to enable the Court to be satisfied of the matters mentioned in Order XLI, R. 5, sub-CI. (3) of the Code.

17. Every application for security under Order XLI, R. 6 or 10, shall state specifically under which rule it is made, and shall be accompanied by an affidavit stating specifically the facts upon which the application is based.

18. Every application for the re-admission or restoration of an appeal or application, dismissed for default of appearance, shall be accompanied by an affidavit stating the circumstances in which such default was made, and whether or not the party whose appeal or application was dismissed had, previously to such dismissal, engaged an advocate to conduct the appeal or application.

19. Every application for an order to a Subordinate Court to forward any record, document or paper shall state —

- (a) the Court in which such record, document or paper is;
- (b) the record in which such document or paper is;
- (c) the date of the document or paper;
- (d) such other information as may be necessary for the purpose of identifying such records, document or paper.

20. Every such application shall bear the Court-fee stamps leviable under Art. 1(d) (ii) of Schedule II of the Court-fees Act, 1870, and shall be accompanied by a certificate signed by an advocate that in his opinion such record, document or paper is requisite and material for supporting or opposing the appeal or other proceedings;

Provided that an application for calling for a record or what was already made a part of a record of the case which has given rise to the proceedings in this Court in connection with which the application is made need not bear a stamp.

AFFIDAVITS

21. Every affidavit to be used in a Court of Justice shall be entitled “In the Court of..... at.....” naming such Court.

22. If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it shall also be entitled in the cause.

23. If there be no cause in Court, the affidavit shall be entitled "In the matter of the petition of".

24. Every affidavit containing any statement of fact shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.

25. Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such a manner as will serve to identify him clearly, that is to say by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

26. When the declarant in any affidavit speaks to any fact within his own knowledge, he shall do so directly and positively using the words "I affirm (or make Oath) and say."

27. When the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression "I am informed", and if such be the case, should add "and verily believe it to be true" and he must also state the source from which he received such information." When the statement rests on facts disclosed in documents or copies of documents procured from any Court of Justice or other source, the deponent shall state what is the source from which they were procured, and his information or belief as to the truth of the facts disclosed in such documents. Copies of documents (other than those on the record of the case) to which it is intended that reference should be made at the time of hearing shall be annexed to the affidavit and shall be marked as an exhibit and shall bear the certificate of the Commissioner before whom the affidavit is made.

28. Every person making an affidavit, if not personally known to the Magistrate, or any Notary appointed under the Notaries Act, 1952 or any Officer or other person whom the High Court appoints in this behalf or any Officer appointed by any other Court which the State Government has generally or specially empowered in this behalf, shall be identified to such authorities by some persons known to him, and the said authorities shall satisfy at the foot of the application or of the affidavit, as the case may be, the name and description of the person by whom the identification is made as well as the time and place of the identification and of the making of the affidavit. Every pardanashin woman verifying an application or making an affidavit in the manner specified in the preceding rules and every such application or affidavit shall be accompanied by the affidavit of identification of such woman made at the time by the person who identified her.⁶

Note 6: Rule 28 has been substituted by Notification No. HC.XI-05/2010/513, dated 05.10.2010

29. If any person making an affidavit is ignorant of the language in which it is written, or appear to the Magistrate or any Notary appointed under the Notaries Act, 1952 or any Officer or other person whom the High Court appoints in this behalf, or any Officer appointed by any other Court which the State Government has generally or specially empowered in this behalf, to be illiterate, or does not fully understand the contents of the affidavit, the said authority shall cause the affidavit to be read and explained to him/her in a language which both he/she and the said authority understand, either doing so himself, or causing another person to do so in his presence. When any affidavit is read and explained as herein provided, the said authority shall certify in writing at the foot of the affidavit that it has been so read and explained, and that the declarant seemed perfectly to understand the same at the time of making the affidavit.⁷

29A. Unless the Court otherwise directs, an Advocate may file a statement of facts signed and verified by him instead of an affidavit.⁸

30. In administering oaths and affirmations to declarants, the Magistrate or any Notary appointed under the Notaries Act, 1952 or any Officer or other person whom the High Court appoints in this behalf or any Officer appointed by any other Court which the State Government has generally or specially empowered in this behalf, shall be guided by the provisions of the Oaths Act, X of 1873. The following forms are to be used:⁷

OATH

I swear that this my declaration is true, that it conceals nothing, and that no part of it is false, so help me God.

AFFIRMATION

31. The Magistrate or any Notary appointed under the Notaries Act, 1952 or any Officer or other person whom the High Court appoints in this behalf or any Officer appointed by any other Court which the State Government has generally or specially empowered in this behalf, competent to administer oaths or affirmations and also to interpret affidavits filed under this Chapter, the following form of affirmation should be used:⁷

“Solemnly affirmed before me this day. I certify that I read over and explained the contents to the declarant and that the declarant seemed perfectly to understand them.”

Note 7: Rule 29, 30, 31 has been substituted by Notification No. HC.XI-05/2010/513, dated 05.10.2010

Note 8: Rule 29A has been inserted by Correction Slip No. 74.

32. Fees — No fee is allowed for taking affidavits or affirmations in the Court house, but fees are allowed to Commissioners for taking such affidavits or affirmations elsewhere.

33. (i) No document being an exhibit to an affidavit or verified petition or forming the materials for any application shall be given back unless the document be an original document in which case it may be taken back on an order of the Registrar, a certified copy of the original document being retained in the file.

Note — The order of the Registrar referred to in Cl. (i) above shall be passed on a stamped application made to him accompanied with a certified copy of the document the return of which is applied for.

(ii) When any such document is itself a certified copy it shall not be returned; Provided that the Registrar may, in exceptional cases, and upon an application supported by an affidavit setting out the grounds upon which the return is asked for, order the return thereof upon such conditions as he thinks fit.
