

APPENDIX - 26**TRIAL COURTS AND FIRST APPELLATE SUBORDINATE COURTS
(UNDER THE GAUHATI HIGH COURT) CASE MANAGEMENT
RULES, 2007***

In exercise of the power conferred by Article 225 of the Constitution of India, Part X of the Code of Civil Procedure 1908, (5 of 1908) and Article 6 of the Assam High Court Order, 1948 and all other powers enabling, the Gauhati High Court hereby makes the following Rules, in regard to case flow management in the Subordinate Courts:

(A) Model Case Management Rules for Trial Courts and First Appellate Subordinate Courts.**I. Division of Civil Suits and Appeals into Tracks.****II. Original Suits.**

1. Fixation of time limits while issuing notice.
2. Service of summons/notice and completion of pleadings.
3. Calling of Cases (Hajri or Call work or Roll Call).
4. Procedure on the grant of interim orders.
5. Referral to Alternative Dispute Resolution.
6. Procedure on the failure of Alternative Dispute Resolution.
7. Referral to Commissioner for recording of evidence.
8. Costs.
9. Proceedings for Perjury.
10. Adjournments.
11. Miscellaneous Applications.

III. First Appeals to Subordinate Courts.

1. Service of Notice of Appeal.
2. Essential Documents to be filed with the Memorandum of Appeal.
3. Fixation of time limits in interlocutory matters.
4. Steps for completion of all formalities (Call Work Hajri).
5. Procedure on grant of interim-orders.
6. Filing of Written Submissions.
7. Costs.

IV. Application/Petition under Special Acts.**V. Criminal Trials in and Criminal Appeals to Subordinate Courts.****(a) Criminal Trials.**

(b) Criminal Appeals.

VI. Notice under Section 80 of Code of Civil Procedure.

VII. Note.

(B) Model Case Flow Management Rules in High Court.

I. Division of Cases into Tracks.

II. Writ of Habeas Corpus.

III. Mode of Advance Service.

IV. First Appeals to High Court.

V. Appeals to Division Bench.

VI. Second Appeals.

VII. Civil Revisions.

VIII. Criminal Appeals.

IX. Note.

(A) MODEL RULES FOR TRIAL COURTS AND FIRST APPELLATE

SUBORDINATE COURTS:

I. DIVISION OF CIVIL SUITS AND APPEALS INTO TRACKS:

1. Based on the nature of dispute, the quantum of evidence to be recorded and the time likely to be taken for the completion of suit, the suits shall be channeled into different tracks. Track 1 may include suits for maintenance, divorce and child custody and visitation rights, grant of letters of administration and succession certificate and simple suits for rent or for eviction (upon notice under Section 106 of Transfer of Property Act). Track 2 may consist of money suits and suits based solely on negotiable instruments. Track 3 may include suits concerning partition and like property disputes, trademarks, copyrights and other intellectual property matters. Track 4 may relate to other matters. All efforts shall be taken to complete the suits in track 1 within a period of 9 months, track 2 within 12 months and suits in tracks 3 and 4 within 24 months.

This categorization is illustrative and it will be for the High Court to make appropriate categorization. It will be for the Judge concerned to make an appropriate assessment as to which track any case can be assigned.

2. Once in a month, the registry/administrative staff of each Court will prepared a report as to the stage and progress of cases that are proposed to be listed in next month and place the report before the Court. When the matters are listed on each day, the Judge concerned may take such decision as he may deem fit in the presence of counsel/parties in regard to each case for removing any obstacle in service of summons, completion of pleadings etc. with a view to making the case ready for disposal.

3. The Judge referred to in clause (2) above, may shift a case from one track

to another, depending upon the complexity and other circumstances of the case.

4. Where computerization is available, the monthly data will be fed into the computer in such a manner that the Judge referred to in clause (2) above, will be able to ascertain the position and the stage of every case in every track from the computer screen. Over a period, all cases pending in his Court will be covered. Where computerization is not available, the monitoring must be done manually.

5. The Judge referred to in clause (2) above, shall monitor and control the flow or progress of every case, either from the computer or from the register or data placed before him in the above manner or in some other manner he may innovate.

II. ORIGINAL SUIT

1. Fixation of time limits while issuing notice.— (a) Wherever notice is issued in a suit, the notice should indicate that the Code prescribes a maximum of 30 days for filing written statement (which for special reasons may be extended upto 90 days) and, therefore, the defendants may prepare the written statement expeditiously, and that the matter will be listed for that purpose on the expiry of eight weeks from the date of issue of notice (so that it can be a definite date). After the written statement is filed, the replication (if any, proposed and permitted), should be filed within six weeks of receipt of the written statement. If there are more than one defendant, each one of the defendant should comply with this requirement within the time limit.

(b) The notice referred to in clause (a) shall be accompanied by a complete copy of the plaint and all its annexure/enclosures and copies of the interlocutory applications, if any.

(c) If interlocutory applications are filed along with the plaint, and if an ex-parte interim order is not passed and the Court is desirous of hearing the respondent, it may, while sending the notice along with the plaint, fix an earlier date for the hearing of the application (than the date for filing written statement) depending upon the urgency for interim relief.

2. Service of Summons/notice and completion of pleadings.— (a) Summons may be served as indicated in clause (3) of Rule 9 of Order V.

(b) In the case of service of summons by the plaintiff or a courier where a return is filed that the defendant has refused notice, the return will be accompanied by an undertaking that the plaintiff or the courier, as the case may be, is aware that if the return is found to be false, he can be punished for perjury or summarily dealt with for contempt of Court for abuse of the provisions of the Code. Where the plaintiff comes forward with a return of refusal, the provisions of Order 9A, Rule (4) will be followed by re-issue of summons through Court.

(c) If it has not been possible to effect service of summons under Rule 9 of Order V, the provisions of Rule 17 of Order V shall apply and the plaintiff shall within 7 days from the date of inability to serve the summons, request the Court to permit substituted service. The dates for filing the written statement and replication, if any, shall accordingly stand extended.

3. Calling of Cases (Hajri or Call Work or Roll Call).— The present practice of the Court-master or Bench-clerk calling all the cases listed on a particular day at the beginning of the day in order to confirm whether counsel are ready, whether parties are present or whether various steps in the suit or proceeding have been taken, is consuming a lot of time of the Court, sometimes almost two hours of the best part of the day when the Judge is fresh. After such work, the Court is left with very limited time to deal with cases listed before it. Formal listing should be first before a nominated senior officer of the registry, one or two days before the listing in Court. He may give dates in routine matters for compliance with earlier orders of Court. Cases will be listed before Court only where an order of the Court is necessary or where an order prescribing the consequences of default or where a peremptory order or an order as to costs is required to be passed on the judicial side. Cases which have to be adjourned as a matter of routine for taking steps in the suit or proceeding should not be unnecessarily listed before Court. Where parties/counsel are not attending before the Court-officer or are defiant or negligent, their cases may be placed before the Court. Listing of cases on any day before a Court should be based on a reasonable estimate of time and number of cases that can be disposed of by the Court in a particular day. The Courts shall, therefore, dispense with the practice of calling all the cases listed adjourned to any particular day. Cases will be first listed before a nominated senior officer of the Court, nominated for the purpose.

4. Procedure on the grant of interim orders.— (a) If an interim order is granted at the first hearing by the Court, the defendants would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

(b) If the Court passes an ad-interim ex-parte order in an interlocutory application, and the reply by the defendants is filed, and if, thereafter, the plaintiff fails to file the rejoinder (if any) without good reason for the delay, the Court has to consider whether the stay or interim order passed by the Court should be vacated and shall list the case with that purpose. This is meant to prevent parties taking adjournment with a view to having undue benefit of the ad-interim orders. The plaintiff may, if he so chooses, also waive his right to file a rejoinder. A

communication of option by the plaintiff not to file a rejoinder, made to the registry will be deemed to be the completion of pleadings in the interlocutory application.

5. Referral to Alternative Dispute Resolution. — (In the hearing before the Court, after completion of pleadings, time limit for discovery and inspection, and admission and denials, of documents shall be fixed, preferably restricted to 4 weeks each).

After the completion of admission and denial of documents by the parties, the suit shall be listed before the Court (for examination of parties under Order X of the Civil Procedure Code. A joint statement of admitted facts shall be filed before the said date.). The Court shall thereafter, follow the procedure prescribed under the Alternative Dispute Resolution and Mediation Rules, 2002.

6. Procedure on the failure of Alternative Dispute Resolution.— On the filing of report by the Mediator under the Mediation Rules that efforts at Mediation have failed, or a report by the Conciliator under the provisions of the Arbitration and Conciliation Act, 1996, or a report of no settlement in the Lok Adalat under the provisions of the Legal Services Authority Act, 1987 the suit shall be listed before the registry within a period of 14 days. At the said hearing before the registry, all the parties shall submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

When the suit is listed after failure of the attempts at conciliation, arbitration or Lok Adalat, the Judge may merely inquire whether it is still possible for the parties to resolve the dispute. This should invariably be done by the Judge at the first hearing when the matter comes back on failure of conciliation, mediation or Lok Adalat.

If the parties are not keen about settlement, the Court shall frame the issues and direct the plaintiff to start examining his witnesses. The procedure of each witness filing his examination-in-chief and being examined in cross or re-examination will continue, one after the other. After completion of evidence on the plaintiffs side, the defendants shall lead evidence likewise, witness after witness, the chief-examination of each witness being by affidavit and the witness being then cross-examined or re-examined. The parties shall keep the affidavit in chief-examination ready whenever the witness examination is taken up. As far as possible, evidence must be taken up day by day as stated in clause (a) of proviso to Rule 2 of Order XVII. The parties shall also indicate the likely duration for the evidence to be completed, and for the arguments to be thereafter heard. The Judge shall ascertain the availability of time of the Court and will list the matter for trial on a date when the trial can go on from day to day and conclude the

evidence. The possibility of further negotiation and settlement should be kept open and if such a settlement takes place, it should be open to the parties to move the registry for getting the matter listed at an earlier date for disposal.

7. Referral to Commissioner for recording of evidence.— (a) The High Court shall conduct an examination on the subjects of the Code of Civil Procedure and Evidence Act. Only those advocates who have passed an examination conducted by the High Court on the subjects of Code of Civil Procedure and Evidence Act, shall be appointed as Commissioners for recording evidence. They shall be ranked according to the marks secured by them.

(b) It is not necessary that in every case the Court should appoint a Commissioner for recording evidence. Only if the recording of evidence is likely to take a long time, or there are any other special grounds, should the Court consider appointing a Commissioner for recording the evidence. The Court should direct that the matter be listed for arguments fifteen days after the Commissioner files his report with the evidence.

The Court may initially fix a specific period for the completion of the recording of the evidence by the Commissioner and direct the matter to be listed on the date of expiry of the period, so that the Court may know whether the parties are co-operating with the Commissioner and whether the recording of evidence is getting unnecessarily prolonged.

(c) Commissioners should file an undertaking in Court upon their appointment that they will keep the records handed over to them and those that may be filed before them, safe and shall not allow any party to inspect them in the absence of the opposite party/counsel. If there is delay of more than one month in the dates fixed for recording evidence, it is advisable for them to return the file to the Court and take it back on the eve of the adjourned date.

8. Costs. — So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory in as much as the liberal attitude of the Courts in directing the parties to bear their own costs had led parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points, which were unnecessarily raised, costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

9. Proceedings for Perjury.— If the Trial Judge, while delivering the judgment, is of the view that any of the parties or witnesses has wilfully and deliberately uttered blatant falsehoods, he shall consider (at least in some grave cases) whether it is a fit case where prosecution should be initiated for perjury and order prosecution accordingly.

10. Adjournments.— The amendments to the code have restricted the number of adjournments to three in the course of hearing of the suit, on reasonable cause being shown. When a suit is listed before a Court and any party seeks adjournment, the Court shall have to verify whether the party is seeking adjournment due to circumstances beyond the control of the party, as required by clause (b) of proviso to Rule 2 of Order XVII. The Court shall impose costs as specified in Rule 2 of Order XVII.

11. Miscellaneous Applications.— The proceedings in a suit shall not be stayed merely because of the filing of Miscellaneous Application in the course of suit unless the Court in its discretion expressly thinks it necessary to stay the proceedings in the suit.

III. FIRST APPEALS TO SUBORDINATE COURTS:

1. Service of Notice of Appeal.— First Appeals being appeals on question of fact and law, Courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected at the admission stage under Rule 11 of Order XLI. In view of the amended CPC, a copy of the Memorandum of Appeal is required to be filed in the Subordinate Court. It has been clarified by the Supreme Court that the requirement of filing a copy of appeal memorandum in the Subordinate Court does not mean that appeal memorandum cannot be filed in the Appellate Court immediately for obtaining interim orders.

Advance notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party who appeared in the Subordinate Court so as to enable the respondents to appear if they so choose, even at the first hearing stage.

2. Essential Documents to be filed with the Memorandum of Appeal.— The appellant shall, as far as possible, file, along with the appeal, copies of essential documents marked in the suit, for the purpose of enabling the Appellate Court to understand the points raised or for purpose of passing interim order.

3. Fixation of time limits in interlocutory matters.— Whenever notice is issued by the Appellate Court in interlocutory matters, the notice should indicate the date by which the reply should be filed. The rejoinder, if any, should be filed within four weeks of receipt of the reply. If there are more parties than one who are Respondents, each one of the Respondent should comply with this

requirement, within the time limit and the rejoinder may be filed within four weeks from the receipt of the last reply.

4. Steps for completion of all formalities/(Call Work) (Hajri).— The appeal shall be listed before the registry for completion of all formalities necessary before the appeal is taken up for final hearing. The procedure indicated above of listing the case before a senior officer of the Appellate Court registry for giving dates in routine matters must be followed to reduce the call work (Hajri) and only where judicial orders are necessary, such cases should be listed before the Court.

5. Procedure on grant of interim orders.— If an interim order is granted at the first hearing by the Court, the Respondents would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

If the Court passes an ad-interim ex-parte order, and if the reply is filed by the Respondents and if, without good reason, the appellant fails to file the rejoinder, Court shall consider whether it is a fit case for vacating the stay or interim order and list the case for that purpose. This is intended to see that those who have obtained ad-interim orders do not procrastinate in filing replies. The appellant may also waive his right to file the rejoinder. Such choice shall be conveyed to the registry on or before the date fixed for filing of rejoinder. Such communication of option by the applicant to the registry will be deemed to be completion of pleadings.

6. Filing of written submissions.— Both the appellants and the respondents shall be required to submit their written submissions two weeks before the commencement of the arguments in the appeal. The cause list should indicate if written submissions have been filed or not. Wherever they have not been filed, the Court must insist on their being filed within a particular period to be fixed by the Court and each party must serve a copy thereof on the opposite side before the date of commencement of arguments. There is no question of parties filing replies to each others written submissions.

The Court may consider having a Caution List/Alternative List to take care of eventualities when a case does not go on before a court, and those cases may be listed before a court where, for any reason, the scheduled cases are not taken up for hearing.

7. Costs.— Awarding of costs must be treated generally as mandatory in as much as it is the liberal attitude of the Courts in not awarding costs that had led to frivolous points being raised in appeals or frivolous appeals being filed in the Courts. Costs should invariably follow the event and reasons must be assigned

by the appellate Court for not awarding costs. If any of the parties have unreasonably protected the proceedings, the Judge shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

IV. APPLICATION/PETITION UNDER SPECIAL ACTS.

This chapter deals with applications/petitions filed under Special Acts like the Industrial Disputes Act, Hindu Marriage Act, Indian Succession Act etc.

The practice direction in regard to Original Suits should *mutatis mutandis* apply in respect of such applications/petitions.

V. CRIMINAL TRIALS AND CRIMINAL APPEALS TO SUBORDINATE COURTS:

(a) Criminal Trials:

1. Criminal Trials should be classified based on offence, sentence, and whether the accused is on bail or in jail. Capital punishment, rape and cases involving sexual offences or dowry deaths should be kept in Track I. Other cases where the accused is not granted bail and is in jail should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy and food adulteration cases, etc. should be kept in Track III. Offences, which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act. etc., should be kept in Track IV. All other offences should be kept in Track V.

The endeavour should be to complete Track I cases within a period of nine months, Track II and Track III cases within twelve months and Track IV within fifteen months.

2. The High Court may classify criminal appeals pending before it into different tracks on the same lines mentioned above.

(b) Criminal Appeals:

3. Wherever an appeal is filed by a person in jail, and also when appeals are filed by the State, as far as possible, the memorandum of appeal may be accompanied by important documents, if any, having a bearing on the question of bail.

4. In respect of appeals filed against acquittals, steps for appointment of *amicus curiae* of State Legal aid counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the registry/State Legal Services Authority immediately after completion of four weeks of service of notice. It shall be presumed that in such as event the accused is not in a position to appoint counsel.

5. Advance notice should simultaneously be given by the counsel for the

party who is proposing to file the appeal, to the counsel for the opposite party in the subordinate court, so as to enable the other party to appear if it so chooses even at the first hearing stage.

VI. NOTICE ISSUED UNDER SECTION 80 OF CODE OF CIVIL PROCEDURE:

Every public authority shall appoint an officer responsible to take appropriate action on a notice issued under Section 80 of the Code of Civil Procedure. Every such officer shall take appropriate action on receipt of such notice. If the Court finds that the concerned officer, on receipt of the notice, failed to take necessary action or was negligent in taking the necessary steps, the Court shall hold such officer responsible and recommend appropriate disciplinary action by the concerned authority.

VII. NOTE:

Whenever there is any inconsistency between these rules and the provisions of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 or the High Courts Act or any other Statute, the provisions of such Codes and Statute, the provisions of such Codes and Statute shall prevail.

By Order,
Sd/-
Registrar General
