

CHAPTER V

GENERAL RULES OF PROCEDURE

1. The provisions of Chapter IV shall apply, as far as may be, to every memorandum of appeal, to every memorandum of objection under Order XLI, R. 22 or 26 Civil Procedure Code, and to every application for revision.¹

1A. Where a particular period has been prescribed by these rules for the doing of anything and the action to be taken is such that the party or his advocate is required to work in the offices of the Court, the prescribed period shall be reckoned exclusively of the day or days on which the offices of the Court are closed.

2. Every memorandum of appeal and of cross-objection shall be drawn up in the manner prescribed by Order XLI, R. I, Civil Procedure Code. Every such memorandum of appeal and of cross-objection and every application for revision shall, immediately below the title, have endorsed on it "First Appeal", "Second Appeal", "Appeal from Order", or "Revision", as the case may be, and shall state —

- (a) the name and full postal address of each appellant or applicant;
- (b) the name of each person whom it is proposed to make a respondent or opposite party;
- (c) the Court in which and (i) in the case of first appeal the name of the Judge by whom the decree or order referred to was made (ii) in the case of second appeal the name of the presiding officers of the lower Appellate Court as well as that of the Court of first instance;
- (d) the date when and the number and year of the suit of proceeding in which such decree or order was made;
- (e) the ground or grounds numbered seriatim of objection to the decree or judgment appealed from, without any argument or narrative;
- (f) the value of the appeal: Provided that in every case in which an appeal or cross-objection is preferred to this Court and the valuation, for the purposes of Court-fees or the Court-Fee paid, varies from that of the trial Court in the case of First Appeals, or from that of either the trial Court or the lower Appellate Court, in the case of second appeals, the advocate shall, at the time of filing the

Note 1: Rule 1. Order XLI, R. 22 of the Code of Civil Procedure was amended by the Amendment Act of 1976 where by the words "on any of the grounds decided against him in the Court below but take any cross-objection" were added. The Explanation to this rule was added empowering the respondent to file cross-objection in respect to a finding adverse to him notwithstanding that the ultimate decision is wholly or partly in his favour.

appeal, add below the valuation in the Memorandum of appeal, a short explanatory note setting forth the reasons for the variation giving, if necessary, references to the certified copies of the judgment and decree, and mentioning the relevant pages thereof, which are filed with the memorandum of appeal. Any omission to file this note shall be forthwith reported to the Registrar, who may direct that the note be filed within a specified period according to the circumstances of each case or direct that the matter be laid before a Division Bench;

(g) in the case of an appeal, whether the suit in which the appeal is made has already been before the Court on appeal.

Note — It is desirable that a separate line should be allowed to the name of each party to an appeal.

3. Where more than one appeals are preferred from a judgment governing more than one case, the Registrar may on an application made in that behalf dispense with the filing of more than one copy of the judgment and direct analogous hearing of the appeals.

4. In the case of —

(1) appeals from orders of the Lower Appellate Court remanding cases of retrials; and

(2) appeals from the orders of the lower Courts made on remand by the High Court,

there shall be added at the foot of every memorandum of appeal a note to the following effect:

“Note — This appeal is from an order of the lower Appellate Court, direct.... remanding the case for re-trial under section..... Civil Procedure Code;

or

This appeal is from an order of the lower Appellate Court (or the Court of the first instance, as the case may be) made on remand by the High Court, in Appeal No..... of dated..... the..... in which this appellant was appellant or respondent (as the case may be).”

5. In the event of any omission on the part of the advocate to append to the memorandum of appeal a note in the terms required by R. 4, it shall be the duty of the Registrar to bring such omission to the notice of the Division Court before which the appeal is pending.

6.(1) A memorandum of appeal to High Court against the decree or order passed in appeal by any Court subordinate to it shall be accompanied by (i) certified copy of the judgment and decree or order appealed from; (ii) typed

copies of the judgments of the trial court and appellate court below; and (iii) typed copies of the pleadings with English translation, if necessary.

Provided that in case of urgency the memo of appeal may be filed with the leave of the court without the typed copy of the pleadings. But the typed copies of the pleadings shall be filed within the time as may be granted by the court.

(2) If a memorandum of appeal is filed by an Advocate of the High Court, it shall bear a certificate under his hand at the foot of the memo of appeal in the following form:

“I, A. B. advocate of the above named do hereby certify that, in my judgment, the ground (or if there be several, each of the grounds) of appeal in the above petition presented by me on behalf of the said..... is a good ground of second appeal.

Dated, the day of

Provided that in the case of an appeal against a decree or order passed after remand by this Court, copies of judgment or decree of the lower Courts passed before the case was remanded need not be furnished.²

7. Every party who files an appeal in person shall insert in his memorandum of appeal, or otherwise given in writing to the Deputy Registrar, an address at which notices and other process in the appeal may be served upon him; and any notice or other process sent to such address by registered letter shall be presumed to have been duly served upon such party.

8. No memorandum of appeal from an appellate decree or from original or appellate order presented in person by any party to the appeal shall be registered without an order of a single Bench before which the party presenting the appeal shall appear in person.³

9. In the case of an application for revision, the application shall be accompanied by certified copies of each of the following documents:

- (i) the judgment, decree or order to which the application relates;
- (ii) if the judgment, decree or order to which the application relates was a judgment, decree or order delivered by a Court sitting in appeal, the copies of

Note 2: Rule 6 — This rule was amended vide 2nd Amendment Rules, 1994, Notification No. H.C.IX 2/94/1178-230/RC dated 18.2.94

Note 3: Rule 8 — This rule was substituted vide Correction Slip No. 58, whereby the only change provided was by way of substitution of the words “Division Court” by the words “single Bench”. Now the order required is that of single Bench” only instead of the Division Court as provided earlier.

the judgment, decree or order of the Court of first instance.

Except in application to be heard by a single Judge together with the application shall be filed duplicate type-written copies of the application and the judgments or orders filed with such application.

10. (1) When a memorandum of appeal is not in proper form and/or is not accompanied by the necessary copies of papers, the Registrar may allow time within which such memorandum must be amended, and/or the necessary papers filed, or may lay the same before the Division Court for orders.

(2) If a memorandum of appeal is presented for admission without copies of the judgment and decree or order appealed from, it shall forthwith be returned to the advocate or party presenting it. If such copies are filed after the period of limitation has expired the memorandum shall be presented direct to the Division Court.

In case of an appeal from appellate decree or order copies of the judgment and decree or order of the Court of first instance shall be filed along with the memorandum of appeal. If such copies are not so filed, the appeal shall not be placed on the monthly list for hearing under Order XLI, R. 11 of the Civil Procedure Code, until they are filed.⁴

11. If in a memorandum of appeal the ground is taken that there is in fact on the record no evidence or admission to support the decree, such memorandum shall state sufficiently the material finding in support of which there is no evidence or admission on the record.⁵

12. Every memorandum of appeal (other than a memorandum of appeal from an appellate decree filed by a party to the appeal in person) or memorandum of objection under Order XLI, R. 22 or 86, Civil Procedure Code, shall be presented in the High Court to the Deputy Registrar or such other officer as the Registrar may appoint for the purpose by the appellant in person, or be his recognised

Note 4: Rule 10— In the amendment of the Code of Civil Procedure by Amending Act, 1976, sub. R. (4) was added to Order XLI, R. 11 to provide that even where the Appellate Court (not being a High Court) dismisses an appeal, it shall deliver a formal judgment and a decree shall be drawn up accordingly.

Note 5: Rule 11 — The second part of this Rule was deleted vide Notification No. H.C.XI/3/53/1452G dated 12.4.54 which read as follows:

"No memorandum of appeal tendered before the office for registration, should be rejected or returned to the parties concerned in case of its being barred by limitation, but that it should be accepted by the office and in due course put up before the court for admission or otherwise, with a note as to limitation."

agent, or by an Advocate appointed under the provisions of Order III, R. 4, Civil Procedure Code, or by some person appointed in writing by such advocate to present the same. The date of presentation to the Deputy Registrar or such other officer as the Registrar may appoint as provided for in paragraph one shall be deemed to be the date of presentation for the purpose of limitation.⁶

13. Except as provided in R. 14 of this Chapter, no memorandum of appeal, no memorandum of objection under Order XLI, R. 22 or 26, Civil Procedure Code, no application for review, and no application for leave to appeal in forma pauperis shall be presented for admission unless the same bears an office report as to limitation of time; and, when a stamp is required, as to the sufficiency or otherwise of the stamp; or, in the case of a stamp of which the sufficiency cannot be ascertained, that the report as to the sufficiency of the stamp will be made on the receipt of the record or after further enquiry. Such report shall ordinarily be endorsed on the memorandum or application and returned by the stamp reporter before 4 p.m. on the date on which such memorandum or application was made over to the stamp reporter for examination.

If the report of the stamp reporter on the memorandum of appeal or cross-objection is that the prescribed period of limitation has expired such memorandum shall be [sent to the Registrar (Judicial) or such other officer as the Registrar may appoint to ascertain limitation period finally and if he finds so, shall be]⁷ returned to the party filing it, [to file separate application along with memorandum of appeal praying to condone the delay or to grant leave to file appeal in forma pauperis. On filing such memorandum of appeal with separate application, the Stamp Reporter section shall register the application only as Misc. Case against the filing serial No. of the memorandum of appeal and place it before the court. The memorandum of appeal etc. shall not be registered unless the applications to condone the delay or grant of leave are allowed by the court]⁷ who may present the same to the Court.

In cases in which it may not be possible for the stamp reporter to return the memorandum of appeal or application on the day on which such memorandum or application was made over to him for examination, the time taken by the stamp reporter in preparing his report shall be excluded from the prescribed period of limitation.

Note 6: Rule 12 - Order III R. 4 of the Code of Civil Procedure as referred to in this rule provides for certain claims to be joined for recovery of immovable property.

Note 7: Inserted vide Notification No.HC.XI-06/96(Pt)/4874/RC dated 22.09.2006

13A⁸. The Superintendent of the S.R. Section will examine the memorandum of all appeals within 7 days from the date of their presentation and in course of his examination, if he finds any defects in memorandum of appeals [he will mention the defects in the check list and will return such defective cases to the parties concerned or the concerned Advocates to cure the defects within 7 (seven) days from the date of scrutiny by the Stamp Reporter. A list of such defective cases shall be prepared and published on all working days at 4-00 pm under signature of Registrar (Judicial) or such other officer as the Registrar may appoint and display it immediately in the Notice Board of the Stamp Reporter Section. A copy of such list shall also be placed in the Notice Board of the High Court Bar Association on the same day]⁹.

14. On the first day on which the High Court re-opens after the annual long vacation a memorandum of appeal or objection under Order XLI, R. 22 or 26, may be presented to the Deputy Registrar or such other officer as the Registrar may appoint for the purpose, and an application for leave to the appeal in forma pauperis may be presented to the Division Court, without the office report, as required by the preceding rule;

Provided that all memorandum of appeal or objection as aforesaid which are presented for admission on the re-opening date after the High Court's annual vacation shall be dealt with in accordance with the provision of R. 18 of this Chapter, after the stamp reporter has recorded his report.

15. Application for review and memorandum of appeals from appellate decrees or from original or appellate orders filed by parties to the appeal in person shall be presented direct to the Court concerned after the report prescribed in R. 13 above has been obtained.

Application for revision shall be presented to the Court with the certificate from the Commissioner of affidavit prescribed by R. 2-A. of Chapter IV and shall exhibit the particulars required by R.2 of that chapter.

16. Applications for leave to appeal in forma pauperis shall be presented with the report of the stamp reporter in open Court to the Court concerned in accordance with the provisions of Order XLIV, Civil Procedure Code.

Note 8: Rule 13A has been added vide Correction Slip No. 85.

Note 9: Substituted vide notification No. HC.XI-06/96(pt)/4874/RC dated 22-09-2006. The substituted portion was as follows :- "it will be his duty to put up the defective case in the Lawazima Court before the Registrar who in his turn will allow 15 days' time to cure the defects to the appellant subject to extension for further 5 days. If the defects are not cured even in the extended time, the appeal should, without further delay, be placed before the Court for necessary orders.

17. The officer to whom the memorandum is presented under R. 12 of this Chapter shall endorse on every such memoranda the date of the presentation and shall sent the same to the stamp reporter, the stamp reporter, if the memorandum is not barred by limitation and is sufficiently stamped and complies with the provisions of these rules, shall record a report to that effect and shall, after the officer-in-charge of the Judicial Department has scrutinized the memorandum and has satisfied himself that the stamps have been properly punched and defaced under the rules and that there are no obvious defects —

(a) in the case of an appeal from an original decree, cause is to be registered and posted for hearing before a single or a Division Bench, as the case may be, under Order XLI, R. 11 of the Civil Procedure Code;

(b) in the case of an appeal from an appellate decree, an appeal from an order and an appeal under the Workmen's Compensation Act cause it to be registered and posted before a Single Bench for hearing under Order XLI, R. 11 of the Civil Procedure Code;

(c) in the case of a memorandum of objection under Order XLI, R., 22 or 26, Civil Procedure Code, admit in and cause it to be registered.¹⁰

18.(1) If there is a reasonable doubt as to the amount of Court-fee leviable on any memorandum of appeal which an advocate or a party desires to present, he shall apply to the Registrar, as Taxing Officer, for his decision as to the Court-fee payable, and the Registrar shall pass an order accordingly and fix period within which the requisite Court-fee must be paid.

Note 10: Rule 17 — This rule first substituted vide Correction Slip No. 53, Notification No. 8459/RC, dated the 20th December, 1971 to come into effect from the date of publication in the Assam Gazette (published in the Gazette dated 5.1.1972), whereby Cls. (a) and (b) were amended.

The original Cls. (a) and (b) of Rule 17 read as follows:

“(a) in the case of an appeal from an original decree and an appeal under the Workmen's Compensation Act, admit it and cause it to be registered and notice to issue to the respondent.

(b) in the case of an appeal from an appellate decree or an appeal from an order, other than an appeal under the Workmen's Compensation Act, admit it, cause it to be registered, and posted to a bench for hearing under Order XLI, R. 11, Civil Procedure Code, and”.

After substitution vide Correction Slip No. 53, as above, the Cls. (a) and (b) read as follows:

“(a) in the case of an appeal from an original decree, admit it and cause it to be registered and notice to issue to the respondent;

(b) in the case of an appeal from an appellate decree, an appeal from an order and an appeal under the Workmen's Compensation Act, cause it to be registered and posted to a Bench for hearing under Order XLI, R. 11, Civil Procedure Code, and”.

The Correction Slip No. 3 dated 20.12.1971, as above, was substituted, as the present one, vide Correction Slip No. 59.

If the requisite fee is not paid within the period fixed, the case shall be laid before the Court for orders.

(2) If the stamp reporter, on a memorandum being presented to him, finds that it has been insufficiently stamped, he shall make a note thereon as regards the deficiency and shall return it, with as little delay as possible, to the advocate or the party presenting it. If the advocate or the party refiles it having supplied the deficit Court-fee, within the proscribed period of limitation the stamp reporter shall record a note to that effect on the memorandum which shall then be admitted.

(3) The advocate or the party to whom a memorandum is returned under Cl. (2) may apply to the Registrar for time to put in the requisite Court-fee. On such application being made, the Registrar, if he is satisfied that in sufficiency of the Court-fee is payable, may fix a period within which the additional Court-fee must be paid. In other cases or when the requisite fee is not paid within the period fixed the Registrar shall lay the matter before the Division Court for orders.

(4) If a memorandum which has been returned under Cl. (2) and for filing for which no time under Cl. (3) has been fixed is re-filed, sufficiently stamped, after the period of limitation has expired, it shall be presented direct to the Registrar and the latter may pass an order for the admission thereof or lay it before the Division Court for orders according as, in his opinion, a case as to mistake or referred to in Cl. (3) has been made out or not.

(5) An application made under Cl. (3) or a memorandum of appeal refiled under Cl. (4) must be accompanied by an affidavit explaining the insufficiency, unless the insufficiency is due to a mistake which is apparent on the face of the papers filed.

19. The stamp reporter or the Bench assistants, as the case may be, must see that S. 30 of the Court-Fees Act is strictly complied with and that no document requiring any Court-fee stamp is filed or acted upon in any proceeding either before the Court or in its offices, until the stamp has been effectively cancelled.

20. In any case in which a memorandum has been returned for amendment under the orders of the Registrar, it shall be the duty of the Deputy Registrar to attest the amendment by his signature.

21. If a memorandum bears a note that a report as to the sufficiency of the stamp will be made on the except of the record, the Deputy Registrar or such other officer as the Registrar may appoint shall note thereon the date of presentation and shall retain it pending the receipt of the report.

22. Every memorandum retained under the provisions of R. 21 shall immediately after the receipt of the record, be examined by the stamp reporter,

who shall endorse on it his report as to the sufficiency of the stamp and shall thereupon proceed in the manner provided in Rr. 17 and 18 above.

23. Whenever the stamp reporter finds that a document which ought to bear a stamp under the Court-Fee Act, 1870 has been through mistake or inadvertence received, filed or used in the Court without being properly stamped, he shall report the fact to the advocate who presented such document. Such advocate shall at once initial the report and shall within one week thereafter, or within such further time as the taxing officer may allow, note on it whether he accepts or disputes the accuracy thereof. If such note is not made within such time, it should not be open to such advocate to dispute the accuracy of the report.

Note — The Hon'ble Chief Justice has been pleased to declare that the Registrar (Judicial) of the High Court, shall be the Taxing Officer under the Court-Fee Act and as per provisions of the High Court Rules.¹¹

24. If a memorandum which has been dealt with under R. 18 above, is duly stamped or amended under R. 20 within the time fixed by the Registrar or the Court, as the case may be, the Court will admit it and the same will be registered. If such memorandum is not duly stamped or amended within the time allowed, the Court may reject such memorandum or pass such other order relating thereto which it may consider proper.¹²

25. An application supported by an affidavit shall be filed for an order for amendment of the memorandum of an appeal consequent on the death of a party including a party whose heirs are already on the record:

Provided that where such amendment relates to a matter in respect of which an order has already been obtained in the Court below but has not been incorporated in the decree of that Court, no application shall be necessary but an affidavit setting out the particulars will be sufficient.

26. If a respondent who was described as minor in the decree to be appealed from has attained majority before the appeal is preferred, and the appellant impleads him as major in the memorandum of appeal the same shall be

Note 11: Rule 23 — The note under this rule was inserted vide Correction Slip No. 16, thereafter substituted vide 3rd Amendment Rules, 1994 dated 30.4.94

Note 12: Rule 24 — This rule was substituted vide Correction Slip No. 60 and the original rule read as follows:

"If a memorandum has been dealt with under R. 18 above is duly stamped or amended under R. 20 within the time fixed by the Registrar or the Court, as the case may be, the Registrar or the Court shall admit it and cause it to be registered. If such memorandum is not duly stamped or amended within the time allowed, the Court may reject memorandum or pass such other order relating thereto which it may consider proper."

accompanied by an affidavit stating the said fact.

27. Where the Deputy Registrar is appointed guardian ad litem of minor respondents under Order XXXII, R. 4(1) Civil Procedure Code, the appellant, at whose instance such appointment is made, shall within 21 days, deposit with the Accountant of the Court the sum of Rs. 51 or Rs. 19 as the case may be, as cost to enable the Deputy Registrar to appoint an advocate on his behalf and shall within the same time file in Court an indemnity bond in favour of the Deputy Registrar.¹³

28. If a respondent, who was described as a minor in the memorandum of appeal, appears as a major he shall, when making such appearance, file an affidavit stating the fact that he has attained majority together with the date when he did so. On such affidavit being filed, the appellant unless he disputes the fact of the respondent attaining majority, shall file a memorandum of appeal, and thereupon the memorandum of appeal shall be amended accordingly. If no such affidavit is filed by such respondent, he shall be precluded from appearing as major and the appellant shall be required to put in the costs, etc. for the appointment of the Deputy Registrar as guardian ad litem of the said respondent:

Provided that it shall always be open to the appellant to ask for such amendment on making an application supported by an affidavit for the purpose.

29. Where in an appeal or other proceeding the natural guardian of a minor respondent or opposite party, upon being duly served with notice does not appear in due time and the Deputy Registrar is appointed guardian ad litem the natural guardian shall be allowed to appear unless he files an application supported by an affidavit making out sufficient ground for the removal of the Deputy Registrar as required by R. 11 of Order XXXII of the Civil Procedure Code. Notice of such application shall be duly served by applicant upon the Deputy Registrar and if an order is made removing the Deputy Registrar it shall be made subject to the payment by the natural guardian of any cost that the Deputy Registrar may have incurred as guardian ad litem in respect of affidavit of advocates' fees, etc.¹⁴

30. On any Court day on which no Bench is or has been sitting any memorandum of appeal or application which might be barred by time, and which is entertainable only by a Bench, may be presented to the Deputy Registrar or, in his absence from Court on the day, to an Assistant Registrar who shall certify

Note 13: Rule 27 - Order XXXII, R. 4(1) of the Code of Civil Procedure as referred to in this rule deals with the appointment of next friend of a minor or as his guardian for the suit.

Note 14: Rule 29, Order XXXII, R. 11 as referred to in this rule relates to retirement, removal or death of guardian for the suit.

thereon that such application was on that day presented to him: Provided always that no such presentation to the Deputy Registrar or an Assistant Registrar shall be of any effect unless such application be presented to a Bench on the next subsequent day on which a bench is sitting.

31.(i) When an appeal from an original decree or an appeal under the Workmen's Compensation Act or an application for revision has been admitted and registered, or, in the case of appeals from appellate decree and appeals from orders other than an order under the Workmen's Compensation Act, when the Court has passed an order to the effect that the appeal will be heard, it shall be the duty of the Deputy Registrar to send a notice [see Form No. 1 (Civil), Appendix I, (*See Page No. 194*)] immediately to the Court from whose decision the appeal is preferred, or the application is made, and to call for the transmission ordinarily within seven days, of the record and all material papers:

Provided that in every appeal from an interlocutory order made in a suit and coming under Order XLIII, R. 1, Cls. (q), (r) and (s), Civil Procedure Code, the connected records should be sent for only if specifically ordered by the Court.

So also, in civil revisions, records should not be called for unless expressly ordered by the Court.

(ii)(a) Whenever any document in the custody of the Parliament and State Assembly or any committees thereof, a retired Chief Justice and a Judge of the High Court are required to be produced in a Court of law, the party to the legal proceedings shall, make an application to the Court stating precisely the documents required and the purpose for which they are required and the date by which they are required. It is also to be specifically stated in each case whether only a certified copy of the document is required or an officer of the Lok Sabha or the State Assembly should produce it before the Court. On such application being filed by the party concerned the Court after due scrutiny of the same shall proceed to take steps to move the Lok Sabha or the State Assembly as the case may be with a letter of request in Form No. 1-B(Civil) (*See Page No. 195*) for producing of the document in question.

(b) Whenever an officer or member of the Parliament or the State Assembly, a retired Chief Justice and a Judge of the High Court is required to be examined as a witness in a Court of law, the party to the legal proceeding shall make an application to the Court in this behalf and the Court after due scrutiny of the same shall proceed to take steps to move the Parliament or the State Assembly as the case may be with a letter of request in Form No. 1-C (Civil) (*See at page No. 196*) for the production of the witness concerned.

(c) Whenever the Presiding Officer of a House of Parliament or a State Legislature or the Chairman of a Committee thereof is required to produce a document or to appear in a Court either as a party or as a witness in a case, a polite letter may be issued in specimen Form No. 1-D (Civil) to him instead of the usual formal notice or summons.¹⁵

31A. When calling for the record and material papers under the preceding rule, the Deputy Registrar shall draw the attention of the lower Court to Note 1 to R. 537 of the Civil Rules and Orders relating to the transmission of cumbrous and bulky exhibits and shall call for such of them, if any, as have been directed by the Court or the Registrar to be called for.

Note — Parties or their advocates desiring bulky exhibits to be called for in cases other than appeals from original decrees may apply to the Registrar before a case has appeared in the Daily Cause List, and to the Court thereafter, for an order under this rule, setting forth sufficient grounds in support of the application; such application when made to the Registrar need not be stamped or verified but should comply with R. 6 of Chapter IV of these rules.

31B. (i) When calling for the record of a contested or uncontested suit or case for probate or letters of administration or for revocation of the same, the attention of the District Judge or District Delegate shall be drawn to the Note to R. 412(1) of the Civil Rules and Orders, Volume I, as amended by Circular Order No. 18 (Civil) of 1939.

(ii) Before a 'Will' is called for in connection with any appeal or case pending in this Court at the instance of a party, such party shall deposit with the Accountant of the Court with challans in the prescribed form, a sum, to be assessed by the office, sufficient to cover all the necessary expenses for transmission and re-transmission thereof by registered post with acknowledgment due and the requisition calling for 'Will' shall contain a certificate that such sum has been deposited.

(iii) Upon receipt of a 'Will' the Deputy Registrar shall take all necessary precautions for the safe custody and preservation of the 'Will' until the same is returned by registered post with acknowledgment due to the District Judge or District Delegate from whom it was received.

Note 15: Rule 31 — The present R. 31 has been re-numbered as R. 31(i) and new Rr. 31(ii)(a), 31(ii)(b) were inserted vide Correction Slip No. 11 dated 21.11.1958, Notification No. 4583 RC, to come into force from the date of publication thereof in the Assam Gazette.

Rule 31(ii)(c) was inserted vide Correction Slip No. 24.

The proviso to Rule 31(i) was substituted by Correction Slip No. 85. The words "a retired Chief Justice and a Judge of the High Court" were inserted by Correction Slip No. 74.

32. Whenever it shall be impossible for the Lower Court to comply with the requisition within the time stated such Court shall report the reason of its inability and shall ask for such further time as may be necessary.

33. The fee for the issue of the notice to the respondent under Order XLI, R. 14, Civil Procedure Code, shall be paid into Court by the appellant.

(a) In the case of appeals from original decrees and appeals under the Workmen's Compensation Act, within two weeks of the date of registration of the appeals, notice whereof shall be given by being entered in a list in Form No. 11 (Civil) Appendix I, (*See Page No. 213*) which will be displayed outside the Appeal Section concerned and a copy sent to the Bar Association's Library. This shall constitute sufficient notice of the date of the registration of the appeal.

(b) In the case of Appeals from Appellate Decree and Appeals from Orders, other than those which are dismissed at the preliminary hearing under Order XLI, R. 11, Civil Procedure Code and other than appeals under the Workmen's Compensation Act within 30 days of the date on which the Court passes an order admitting the appeal.

Note:— Process fee required for the issue of notice on substituted parties shall be filed within a fortnight from the date of substitution and the process fee for the issue of fresh notice shall be filed within one week from the date of the order directing the issue of such notice. In either case notice form duly filled in shall accompany the process fee.¹⁶

33A. The fee for the issue of notice under Order XLI, R. 22(3) if necessary, shall be paid, together with the necessary copies of cross objection, within one week from the date of the registration of the memorandum of cross objection, notice whereof shall be given in the manner prescribed in R. 33(a) above.

34.¹⁷ The appellant, within a week from the date of admission of appeal, will

Note 16: Rule 33. — Order XLI, R. 14 of the Code of Civil Procedure as referred to in this rule was amended by the 1976 Amendment of the Code, whereby sub-Rr. (3), (4) and (5) were inserted with a view to avoid the delay in the disposal of appeal.

Order XLI, R. 11 as referred to in this rule was amended vide 1976 Amendment of the Code by way of addition of Sub-R. (4).

Note 17: Rule 34 was substituted by Correction Slip No. 85 and before substitution read as follows:

"34. (i) The appellant within thirty days from the registration of the memorandum of appeal, notice whereof shall be given in the manner stated in R. 3(a) above shall, in the case of appeals from original decrees, deposit with the accountant, in one instalment, the sum of Rs. 50.

(2) In the case of First Appeal from Orders passed by a Subordinate Civil Court (including orders under S. 47, Civil Procedure Code) the appellant shall, at the time of paying the fee for the issue of the notice to the respondent under Order XLI, R. 14, Civil Procedure Code, deposit the sum of Rs. 30 towards the cost of the preparation of the paper-book in the appeal."

file required number of copies of the memorandum of appeal with the necessary process fee etc.

35.(1) Whenever it is necessary under these rules to issue a notice to a respondent under Order XLI, R. 14, Civil Procedure Code, the appellant shall simultaneously with the filing of the fee for the issue of such notice, file printed forms of such notices, duly filled up in the prescribed Form No.2 (Civil) Appendix I (*See Page No. 196*) the date of appearance and the date of the notice being left blank.

(2) The information entered in the forms must be filled up in the Vernacular or in English in a bold, clear and easily legible handwriting.

(3) The date fixed for appearance will be inserted in the form and the notice will be dated and signed by an officer of the Court.

(4) The necessary number of the printed forms of notice in the prescribed form will be supplied to the appellants, or their advocates, free of cost on application to the Forms Assistant.

(5) The Registrar may, in his discretion, direct in any particular case that the forms of notice be entirely filled up in the office of the Court.

36. If the fee for the issue of the notice to the respondent be not paid into Court in the manner provided by R. 33 or the deposit required under R. 34 be not made within the time allowed by that rule; or if the notice forms, duly filled up be not filed as provided in the last preceding rule, the appeal shall be placed before the Registrar who may, in his discretion, either grant further time for making such payment, or deposit or filing the notice forms, or direct the appeal to be placed before the Court for orders.

37. If the process fee be paid and the notice forms be filed within the period prescribed by Rr. 33 and 35 or within the further period allowed by the Registrar of the Court the notice in the prescribed form shall at once issue on the respondent.

38. If such respondent resides within the jurisdiction of the Court from whose decree or order the appeal is preferred, the notice to such respondent shall be sent to the Presiding Officer of such Court together with the proceeding of the High Court calling for the record.

39. Notice for service on respondents or opposite parties residing in any district other than that from which the appeal, application, etc. comes, shall be sent by the Deputy Registrar to the proper Court in the district in which such notice is to be served. If, however, the opposite party or any of the parties to be served, resides in the same district but outside the jurisdiction of the Court from

which the appeal, application, etc. comes, the notice shall be sent for service to the Court within whose jurisdiction the party resides, if known; if not known then to the Court from which the appeal or application comes, directing the latter to forward it to the proper Court within the jurisdiction of which the notice is to be served. The Court which serves any notice shall in every case make its return of service or of the failure of service (as the case may be), direct to the High Court.

39A. Where the jurisdiction within which a party resides is not known, the notice in respect of such party shall be accompanied by a duplicate copy for the purpose of return of service.

40. On receipt of the proceedings of the High Court, transmitting the notices of appeal or application, the Lower Court shall cause their service without the payment of any further fee and without any further action by the appellant:

Provided that the appellant or application or someone employed by him may, in any particular case if he so desires, accompany the serving officer for the purpose of facilitating the service of the processes.

41. The time allowed for service of the notice shall be specified therein by the Deputy Registrar not exceeding 21 days and shall commence from the date on which it is despatched, which shall, in general, be the day on which the process-fee is deposited and the notice forms are filed.

42. The lower Courts shall issue all notices immediately on receipt thereof and in their returns of service shall, in every instance, insert (a) date of receipt of notice; (b) date of delivery to the serving officer; and (c) date of receiving it back from him.

43. It shall be the duty of the lower Court to cause the notice to be served in sufficient time before the date fixed, and, if such service be impracticable, to state, when returning it to the High Court, the reasons thereof. The lower Court shall satisfy itself that a valid service has been made, or that there has been a failure of service, and shall certify such opinion with the reasons in case of failure of service. The certificate shall be accompanied by the return of service, or of failure to serve the notice, and declaration or the serving officer specifying the fact and mode of service or the reasons for non-service.

44. The date to be fixed for the hearing of the appeal shall be the 21st day after the date on which the time for the service of notices expires; provided that if such day be a Sunday or holiday, the first open day next following shall be the date fixed for the hearing.

45. In an appeal in which more than one respondent is to be served with the

notice under Order XLI, R. 14, Civil Procedure Code, the Deputy Registrar, in fixing the time for the hearing of the appeal, shall fix the 21st day after the day fixed for the service of the notice of appeal on there respondent for whom the longest period is allowed under the following rule.

46. When in an appeal or other proceeding the Court orders a notice to show cause to issue, such notice shall ordinarily be issued to all parties to such appeal or other proceeding and to any person whom it is proposed to make a party. If the person whom the notice is to issue is a minor, a person of unsound mind, or other disqualified person, it shall also be issued to the guardian or next friend of such person.

47. In every case in which an appeal has been admitted, the Registrar shall cause paper-books to be prepared in accordance with the provisions of Chapter IX.

48. As soon as the paper-book has been prepared in accordance with the provisions of Chapter IX, and the appeal is otherwise ready for hearing it shall be entered in the general warning list and notice thereof shall be published in the manner proscribed in R., 57 of Chapter IX of these rule:

Provided that unless there is a special order to the contrary, no appeal shall be entered in the weekly cause list until the expiry of seven days from its entry in the general warning list of appeals ready for hearing.

49. From the weekly cause list the Deputy Registrar subject to any special orders passed by the Judges or by the Registrar, shall at the end of every week caused to be prepared and posted on the notice board of the Court the list of cases to be taken up by each Bench during the ensuing week. The list shall be called "Weekly Hearing Cause List" and a copy of the same shall be submitted to all the Judges:

Provided that a daily cause list shall be caused to be prepared and posted on the notice board of the Court containing a list of cases to be taken up on the following day whenever so directed.¹⁸

49A. Subject to any other orders of the Chief Justice, returnable cases, if otherwise ready, shall be set down for hearing in the weekly hearing cause list or the daily cause list, on the returnable date. If not ready, these shall be listed in the daily list for orders on the returnable date.¹⁹

Note 18: Rule 49 proviso was added vide correction slip No.74.

Note 19: Rule 49-A — This rule was inserted vide Correction Slip No. 41 dated the 18th August 1970, and submitted by Correction Slip No. 74.

50. The daily cause list for the days on which the Registrar sits shall include a list of the cases which will be taken up by him.

51. If on the date fixed for the hearing of any appeal, application or other matter, it appears that the requisite notices have been served, and the matter is otherwise ready for hearing, the matter may be disposed of; if not disposed of, it shall come on for disposal in the ordinary course, and no notice of any date fixed for hearing shall be given other than its inclusion in the daily cause list, or the weekly hearing cause lists.

51A. At the time of final hearing of a Second Appeal the appellant shall submit in writing signed by him or his advocate the following:

(1) A very brief summary of the plaintiff's case as is material for the purpose of deciding the questions of law that will be urged by him.

(2) The appellant will give very briefly the defendant's case with reference to the questions of law to be urged.

(3) Findings of facts of the Court below on which the question of law urged depend —

(a) (Concurring)
(Reversing)

(b) do

(c) do

(4) The precise grounds of law that will be urged —

(a)

(b)

(c)

(5) The authorities that may be cited.²⁰

52. A case which is part-heard, shall, unless otherwise ordered by a bench, be placed first in the daily cause list or the weekly hearing cause list for the day on which the Bench which has partly heard such case next sits for the disposal of that class of business.

53. Subject to R. 52, a case which is specially fixed for a particular day before a particular Bench shall be placed at the head of the list for that day.

54.²¹ The cases in the daily cause list or the weekly hearing cause list shall,

Note 20: Rule 51-A. This rule was added vide Correction Slip No. 62.

Note 21: The words "or the weekly hearing cause list" were added after the words "daily cause list" in Rr. 51, 52 and 54 vide Correction Slip No. 74.

unless the Bench otherwise directs, be called on and disposed of in their order on the list.

55. Appeals from orders shall have precedence over other appeals in preparation for hearing and shall, when ready, be put up for hearing as soon as possible.

56. When an order has been made under Order XLI, R. 23 or 25, Civil Procedure Code, the Deputy Registrar shall make a note of the same in a register to be kept for the purpose, and he shall bring in the notice of the Registrar any case in which the Subordinate Court has not made a return to the order of remand within four months, or within such time as may have been specially ordered.

57.²² On receipt of the finding of a lower Court in a case referred under Order XLI, R. 25, Civil Procedure Code, the Deputy Registrar shall notify to the advocate of the parties that any objection to such finding must be filed within one week from the date of the service of the notice.

58. Whenever by an order of a Division Court, the decree or order of a lower Court is modified or reversed or costs are fixed in any special sum not specified in the judgment, as soon as the decree or order has been drawn up, it will be the duty of the Bench Assistant concerned to cause a notice to be issued to the advocates concerned or to the parties, if acting in person, stating that such decree or order has been drawn up and that it may be perused by any party or his advocate within one week from the date of the issue of the notice.

59. When such notice has been issued, any party or his advocate may, before the expiry of the time proscribed in R. 58, peruse the decree and either sign it or state his objection to the Judge or Judges, or one of them who delivered the judgment, or if such Judge or Judges has or have ceased to be a Judge or Judges of the Court, or be absent on leave or furlough then before such Judge or judges as the Chief Justice may appoint for that purpose.

60. (1)²³ Should no objection be filed on or before the date specified in the notice, the Registrar or when so authorised the Deputy Registrar or the Assistant

Note 22: Rule 57 — Order XLI, R. 25 of the Civil Procedure Code as referred to in this rules was amended vide the Amendment Act of 1976 to provide that the Appellate Court, while remanding the case, may provide for a time limit for returning the evidence and findings.

Note 23: Rule 60 — Sub-rule (1) of this rule was first amended vide Correction Slip No. 4 dated 9.3.1957, Notification No.HC. XI-1/57/1107/RC, and the so substituted rule was again amended vide Correction Slip No. 63, whereby the words, "or the Assistant Registrar" were added in between the words, "the Deputy Registrar" and having first". The original sub-rule read as follows:

"(1) Should no objection be filed on or before the date specified in the notice, the Bench Assistant shall submit the decree to the Judges for signature."

Registrar having first dated the decree as of the day when the judgment was delivered, shall sign it and seal it with the seal of the Court.

(2) In drawing up decrees of this Court dismissing with costs appeal by minors, the Bench Assistant should be careful to make the next friend of the minor liable for such costs, unless the Court otherwise orders.

(3) In case where a minor is respondent and the decree of the Court below is reversed or altered, it shall be the duty of the Bench Assistant to call the attention of the Division Court to that fact, in order that special direction may be given as to the payment of costs.

61. A copy of the judgment and of the decree passed by the High Court, disposing of an appeal shall be certified by the Deputy Registrar and forwarded by him to the Court which passed the decree appealed from, in the manner proscribed by Order XLI, R. 37, Civil Procedure Code.²⁴

62. Every decree and order made by the High Court shall be drawn up in the English language.

63. Except when the Registrar otherwise directs, the records of the lower Court shall be sent down as soon as possible after the case has been disposed of.

64. No advocate shall receive instructions from any person other than an advocate, an Attorney, an enrolled Mukhtar of the Court, or the party himself, or a person holding a general power of attorney from him, or his servant or relation or a pleader of the Muffassal Court specially authorised in writing in that behalf. Where there are more parties than one, and they appear by separate Vakalatnamas, the Vakalatnama of one may be received from any other similarly authorised, but if they appear by one and the same Vakalatnam, it may be received from any one of them or from a person duly authorised by any one of them, without special authority from the others. When any Vakalatnama is filed by an advocate he shall endorse on the back of it the name of the person from whom it is received and if such person is not the client himself, for an advocate, Attorney, or enrolled Mukhtar shall state the nature of the authority, with date, of that person.

65. When an advocate retained to appear for any party to an appeal is prevented by sickness or engagement in another Court, for any other sufficient cause, from appearing and conducting the case of the client, he may appoint

Note 24: Rule 61 — Order XLI, R. 37 of the Civil Procedure Code, as referred to in this rule, relates to the certified copy of decree to be sent to Court where decree appealed from.

another advocate to appear in his place, so that his client may not be unrepresented at the hearing, but such advocate shall not so appear unless he shall have first obtained the special permission of the Division Court, or the Registrar, as the case may be.

66. In any case in which the party employing an advocate, or his agent, after the notice fails to pay the amount of the estimated costs for preparing brief necessary to enable the advocate to conduct the case properly, the advocate or advocates, after notice to such party or his agent, or by leave of the Court, may withdraw from the case.

67. An advocate may also, for any other sufficient cause, or after such notice to his client as may enable him to appoint another advocate by leave of the Court, but not otherwise and on such terms as the Court may order as to refunding any fees he may have received withdraw from the further conduct of the case.

68. A party desiring to cancel a Vakalatnama filed by him in any appeal or other proceeding in this Court must file a duly stamped and verified application for the orders of the Court unless the advocate who accepted the Vakalatnama signifies his willingness to retire from the case, in which case the application need not be verified.

69. The Deputy Registrar shall endorse the date of reception all Vakalatnama in all cases in the High Court in its appellate jurisdiction.

70. The Deputy Registrar shall bring to the notice of the Registrar any wilful neglect on the part of any advocate attached to the High Court to attend at his office.

71. In every civil matter in which the Court directs an order to be issued immediately, the Bench Assistant shall at once draw up the order in the prescribed form [see Form No. 3 (Civil) Appendix I, (See at page No. 198)] and after obtaining the signature of the Judges thereto, send it forthwith to the Deputy Registrar or the officer in charge of the Judicial Department, as the case may be, for issue without waiting for the formal order, or the judgment to be signed. The Deputy Registrar or the officer-in-charge of the Judicial Department shall issue the order upon payment of such fee as may be chargeable;

Provided that if it is not possible to obtain the signature or signatures of the Judge or Judges on the day on which the order is passed, the matter should be brought immediately to the notice of the Registrar. If one Judge of a Bench has signed the order, the substance of it shall be communicated to the lower Court immediately with a note that the copy of the order proper will follow.

72. The stamp reporter shall bring to the notice of the Deputy Registrar any

irregularity committed by the lower Courts in the preparation and endorsement of certified copies of the decrees of their Courts, and the Deputy Registrar shall submit his report of such irregularity to the Registrar.

73. Requisitions made under Order XIII, R. 10, Civil Procedure Code, for the production of records of cases pertaining to, and in the custody of other High Courts or Courts subordinate to such other High Courts should be addressed to such High Courts.

74. A party to a decree or order desiring to appeal therefrom and to make the legal representative of a party who has died after the date of such decree or order, a respondent may, if such legal representative has not been made a party to any subsequent proceeding under such decree or order enter his name as a respondent in the memorandum of appeal if he presents therewith an application for leave to make such legal representative a respondent to the appeal and also an affidavit stating such facts as may be necessary in support of his application.²⁵

75. A party to a decree or order desiring to appeal therefrom and to make the legal representative of a party who died before the decree or order was made, a respondent may, if such legal representative has not been made a party to any subsequent proceedings under such decree or order, enter his name as a respondent in the memorandum of appeal if he presents therewith an affidavit showing that he did not know before the decree or order was made that such party had died or that he had no reasonable opportunity of informing the Court before such decree or order was made that such party was dead and stating such other facts as may be necessary in support of his application.²⁶

76. Whenever by a decree or order which is applicable to the High Court the interest of—

(a) a beneficiary in property which at the date of such decree or order was vested in or was in the possession of a trustee, executor, administrator or a receiver or manager appointed by a Court, who as such was a party to such decree or order, or

(b) a legal representative as such of a deceased party to such decree or order, or;

(c) an assignee of a party to such decree or order by assignment subsequent to the date thereof, or

(d) a person whose interest arose after the date of such decree or order by

Note 25: Rule 74 — This rule was inserted vide Correction Slip No. 20, dated 26.8.1960, to make effect from the date of its publication in the Assam Gazette.

Note 26: Rule 75 — This rule was inserted vide Correction Slip No. 20, dated 26.8.1960, to take effect from the date of its publication in the Gazette.

reason of any creation or devolution of interest by, through or from any part to such decree or order,

is affected, and such beneficiary, legal representative, assignee or, person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to appeal therefrom, he may name himself in the memorandum of appeal as an appellant if along which such memorandum of appeal he presents an application for leave to make himself an appellant and an affidavit stating such facts as may be necessary to support of his application.²⁷

77. Whenever after a memorandum of appeal has been presented to the Court any appellant or party interested in the maintenance of an objection under Order XLI, R. 22 or 26 ascertains that any party named in the memorandum of appeal had died before the appeal was presented he may apply for an order that the memorandum of appeal be amended by substituting for the person who is dead his legal representative, if along with his application he files an affidavit showing that the application is made with all reasonable diligence after the fact of the death of such person first came to his knowledge or to the knowledge of his agent, if any, acting on his behalf in the litigation.²⁸

78. The Registrar may allow a reasonable time for the presentation of the affidavit required by R. 74, 75, 76 or 77 if it appears to him that the applicant could not, by the exercise of due diligence, have procured such affidavit in time for present action along with his application.²⁹

79. Rules 74 to 78 shall as far as may be apply to appeals under Cl. 10 of the letters patent, to applications for review or revision and to application under Art. 228 of the Constitution and the cases transferred thereunder.³⁰

80. At any time before or as soon as after the commencement of agreements at the final hearing of a case as may be feasible, the Court will ascertain from the Counsel of each party to be heard, the time which the Counsel's arguments on the matter are likely to take. The Court may then fix the time for the arguments of each party or each Counsel. The Counsel may be permitted to supplement the oral arguments by written submission, but will not be allowed to exceed the time so fixed unless the Court itself consider it necessary, or desires that he should do so on any matter requiring further elucidation by oral arguments.³¹

Note 27: Rule 76 — This rule was added vice Correction Slip No. 20, dated 26.8.1960 to take effect from the date of its publication in the official Gazette.

Note 28: Rule 77 - This rule was inserted vide Correction Slip No. 20, dated 26.8.1960 to take effect from the date of its publication in the Assam Gazette.

Note 29: Rule 78 - This rule was inserted vide Correction Slip No. 20, dated 26.8.1960 to take effect from the date of its publication in the Assam Gazette.

Note 30: Rule 79 - This rule was inserted vide Correction Slip No. 20, dated 26.8.1960 to take effect from its publication in the Assam Gazette.

Note 31: Rule 80 has been inserted by C.S.No. 83

CHAPTER V-A

RULES GOVERNING APPLICATIONS FOR DIRECTIONS, ORDERS OR WRITS (OTHER THAN IN THE NATURE OF HABEAS CORPUS) UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

1. An application for a direction or order or writ under Article 226 of the Constitution of India, other than writ of habeas corpus, shall be drawn up in the form contained in the schedule to this Chapter and shall be accompanied by an affidavit verifying the facts relied upon.

Separate applications should be filed for each individual where interests are not identical even if there is one common order covering several cases and the facts of each case should be separately supported by affidavit.

Provided that more than one such individual can jointly file a single writ petition on each of them paying court fee payable on such application.¹

In all other respects the procedure relating to the revision application shall apply to such applications.

[All applications under Article 226/227 of the Constitution of India intended to be moved before this court, the following paragraph should invariably be incorporated in every application:

“That the humble petitioner has no other adequate and alternative remedy and the remedy sought for is complete and adequate.”

The Filing Section should verify and satisfy as to the inclusion of the above paragraph in all the applications filed by the learned advocates.]²

1 A. In all Civil Rules, one additional set of authenticated petition with annexures and affidavits, if any, shall be filed by the party concerned.³

2.(1) Every such applications shall be made and heard before the Single Judge except where the Chief Justice otherwise directs:

Provided that such application falling within any one or more of the following categories shall be heard by a Division Bench except where the Chief Justice otherwise directs:

- (a) Public Interest Litigation;
- (b) Habeas Corpus Application;
- (c) Application relating to externment or deportation;
- (d) Any application which a Single Judge may refer to the Chief Justice for

Note 1: This provision was inserted vide Amendment Rules 1992, Notification No. H.C.XI-10/79/19349/RC dated 19.8.1992

Note 2: This Rule was inserted vide Notification No. H.C.111/15/78/12668-69/G dated 3.8.96

Note 3: Rule 1A. was inserted vide 1st Amendment Rules 1996, Notification No. H.C.06/96/1417-1449/RC dated 31.3.1997

placing it before the Division Bench having regard to the importance or complexity of the case.

[(e) Writ Petitions in which constitutional validity of any Act, Rules or any provisions thereof have been challenged.]⁴

(2) An appeal from the Judgment and Order of a Single Judge disposing of an application shall lie to the Division Bench if preferred within thirty days of the date of such Judgment and Order. The Division Bench may condone the delay in filing any appeal, if good and sufficient cause is shown:

(3) The appeal shall be in form No. 3A in Appendix I, (*See Page No. 199*)⁵

[(4) In case of Writ Appeals, along with the Memorandum of Appeal, the certified copy of the judgment, authenticated copy of the Civil Rule / Writ Petition with relevant annexures, copy of affidavit-in-opposition, counter affidavits and all other relevant papers filed by the party concerned in the relevant Civil Rule / Writ Petition from which the Writ Appeal has arisen, must be included.]⁶

3. Unless the Court sees no sufficient cause to admit the application and rejects it, notice of the application shall be served on all persons directly affected by the application and, where the application relates to any proceedings in or before a Court and the object is either to compel the Court or an officer thereof

Note 4: Inserted vide Notification No. HC.XI-09/2006/5942/RC dated 06.11.2006.

Note 5: Rule 2 was inserted vide Amendment Rules 1992, Notification No. H.C.XI-10/79/19349/RC dated 19.8.92. The original Rules as per correction slip No. 54 read as follows:

Every such application shall be made and heard before the Division Bench except where the Chief Justice otherwise directs;

Provided that during the vacation such application may be made before the Vacation Judge.

Provided further that when or where no Division Bench is sitting or available it shall be competent for a Single Judge to pass any interlocutory orders in such application and direct the same to be placed before a Division Court for orders.

Provided also that all interlocutory matters including stay and condonation of delay application and substitution petitions shall be dealt with by a Single Judge unless otherwise ordered by a Division Bench.

The original Rule 2 before correction slip No. 54 read as follows:

"2. Every such application shall be made before the Division Bench taking criminal business other than undefended criminal cases, except on any day on which no such Bench is sitting when it may be made to the Chief Justice or in his absence the senior-most Judge unless the Chief Justice has nominated any other Judge for the purpose:

Provided that during the vacation such an application may be made before the vacation Judge.

This original rule, before being substituted by Correction Slip No. 54, was substituted vide Correction Slip No. 7 dated the 5th August 1957 reading as follows:

Every such application shall be made and heard before the Division Bench except where the Chief Justice otherwise directs"

Note 6: Rule 2 sub-rule 4 inserted vide notification No. HC.XI-02/2006/281/RC dated 28.02.2006

to do any act in relation to such proceedings or to quash them or any order made therein, notice shall also be served on such Court or Officer as well as the other parties to the proceedings and where any objection is taken with respect to the conduct of the Judge, also on the Judge:

Provided that service on the Government Advocates and/or Public Prosecutors, Assam, Nagaland, Meghalaya, Manipur, Tripura and the Union Territories of Mizoram and Arunachal Pradesh and on the Standing Counsel of the Union of India or of any of its Departments, will be sufficient service on the parties represented by them for the purposes of this rule.⁷

3 A(I). Notice on Government Servants, instead of being sent back to the Court with the report that the official is no longer at the given address, the same should be redirected to the new station of posting to the official concerned.

3 A(II). While dismissing a Writ Petition in limine, one word order "dismissed"

Note 7: Rule 3. — The proviso to this rule was inserted vide Correction Slip No. 45 dated 18.8.1970 and then substituted vide Correction Slip No. 61. The proviso in original as inserted by Correction Slip No. 45 read as follows:

"Provided that service on the Government Advocates and/or Public Prosecutor, Assam, Nagaland, Meghalaya, NEFA, and also on the standing counsel for the Union of India or for any of its Departments, will be sufficient service on the parties represented by them for the purpose of this rule".

The Limitation Act applies and the Court has jurisdiction to entertain an application under Section 5 of the Limitation Act in a Writ Appeal under R. 2 of the High Court Rules vide Civil Misc. Case No. 22/81 dated 19.8.81 [*State of Assam & Ors. Vs. Naresh Chandra Das & Anr., decided by the Hon'ble K. Lahiri and Hon'ble T.C. Das, JJ. AIR 1983 Gau 24: 1983 (1) GLR NOC 28 at p. 54*].

When liberty of a person is in jeopardy such procedure will be evolved, adopted or accepted by the Court as will be conducive to the expeditious disposal of the matter and therefore R. 3 of Chapter V-A of the Gauhati High Court Rules is applicable in the case of habeas corpus petitions. [*Joynath Sarma Vs. State of Assam, in Civil Rule No. (HC) 13 of 1983 as decided by Hon'ble N.I. Singh and Hon'ble Dr. T.N. Singh, JJ (1983) GLR 289 (291)*].

The question is, whether the provision of Rule 1 is mandatory. The answer is not. Because, the Court has discretion to waive compliance therewith in view of opening words of Rule 3 of the same Chapter. Indeed, the provision does not even carry a mandate in it that an application not in conformity thereto must be dismissed. Rule 3 contemplates "unless the Court sees no sufficient cause to admit the application that rejects it....." The language used in the provision itself projects vocally its discretionary nature. It is when "interests" are not identical that separate applications are contemplated even though there is a common order because the facts of the case of each individual may be different and the provision does not, in any manner, impinge upon jurisdictional competence of the Court carrying in it an inexorable compulsion, or even a mandate to the Court, so as to invest it with a mandatory character, *Dr. D.C. Choudhury & 51 Ors. Dr. H.M. Hazarika & 36 Ors. Dr. Rajani Kanta Das & 21 Ors. Vs. State of Assam & Ors. (1985) 1 GLR 362*.

should be avoided.⁸

4. (i) If at the hearing of the application the Court is of opinion that any person who ought to have been served with notice of the application has not been so served, the Court may order that notice may also be served on such person and adjourn the hearing upon such terms, if any, as the Court may direct.

Every notice under this or the next preceding rule shall be accompanied by copies of the application and the affidavit.

(ii) Counter-affidavits in such matters shall be filed with the proper office of the Court by the opposite party within 14 days from the date of service of notice and any affidavit in reply should be filed by the applicant within 7 days from the date of service of the counter-affidavit on him by the opposite party, failing which such affidavit shall not be considered in evidence unless one is filed with the special leave of the Court:

Provided that in returnable cases, subject to any special orders of the Court, counter-affidavits shall be filed at least four days prior to the returnable date and the petitioner shall file his replication, if any, within two days thereafter.⁹

5. The Court may, before issuing notice of the application, impose upon the applicant such terms as to costs or the giving of security as it may think fit.

6. At the hearing of the application, any person who desires to be heard in opposition to the application and appears to the Court to be a proper person to be heard, may be heard notwithstanding that he has not been served with notice under R. 3 or R. 4.

6A. At the time of final hearing of an application under Art. 226 of the Constitution of India, the counsel for the petitioner shall submit in writing the following:

(1) A list of dates with concise particulars in chronological sequence showing also the date of the impugned order with asterisk mentioning the particular Annexure;

(2) Specific grounds that may be urged before the Court;

(3) Relevant provisions of law that may be relied upon; and

(4) The authorities that may be cited.¹⁰

7. In any petition under these rules, the petitioner shall state whether any other remedy for the redress he is seeking has been provided for by or under any

Note 8: Rules 3-A (I) and 3-A(II) inserted by Correction Slip No. 86.

Note 9: Rule.4— Vide Correction Slip No.19 dated 26.8.1960, to come into effect from the date of publication thereof in the Assam Gazette, the then existing rule was renumbered as R. 4(i) and R. 4(ii) was newly inserted. The proviso to R. 4(ii) was inserted vide Correction Slip No. 46 dated 18.8.1970.

Note 10: Rule 6-A - This rule was inserted vide Correction Slip No. 47 dated 18.08.1970.

other law for the time being in force.¹¹

¹²[7A. Where an interim order whether by way of an injunction or stay or in any other manner is made without —

(i) furnishing to the party against whom it is made copy of the petition and all document in support of the plea for such interim order; and

(ii) giving such party an opportunity of being heard the party affected may make an application to the High Court for vacation of such interim order.

7B. Copies of the application and all documents in support of the plea for vacation shall be furnished to the party in whose favour such an order has been made or the counsel of such party.

7C. The application shall be disposed of by the High Court within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later or where the High Court is closed on the last day of that period before the expiry of the next day afterwards on which the High Court is open.

7D. If the application is not disposed of as stated in R. 7-C, the interim order shall on the expiry of that period or as the case may be, on the expiry of the said next day, stand vacated.]

8. An application under these rules shall be made by an advocate or by the party personally.

9. Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts.

10. All questions arising for determination under these rules shall be decided ordinarily upon affidavits, but the Court may direct that such question as it may

Note 11: Rule. 7— This rule was substituted vide Correction Slip No. 71 dated the 9th February, 1977 to come into effect from 1.2.1977 and the original rule read as follows:

“7. No order, direction or writ under these rules shall be issued if adequate relief is obtainable by the applicant by any other process of law”.

In this rule, vide Correction Slip No. 73, the words “whether there is any” were substituted for the words “that there is no”. The rule was further substituted vide Correction Slip No. 77 and before substitution the said rule was read as follows:

“7. In any petition for redress of any injury referred to in sub-Cl. (b) of sub-Cl. (c) or Cl. (1) of Art. 226 of the Constitution of India, the petitioner shall state in the petition that there is no other remedy for such redress provided for by or under any other law for the time being in force.”

Note 12: Rules 7A, 7B, 7C and 7D were substituted by Correction Slip No. 77 and as originally inserted by Correction Slip No. 71 dated the 9th February 1977. and substituted and inserted vide correction slip No. 72 by notification No. HC.XI.4/65-68/6788/RC dated 6.7.77. The said rules read as follows :-

Contd...

consider necessary be decided on such other evidence as it may deem fit. Where the Court orders that certain matters in controversy between the parties shall be decided on such evidence, the procedure prescribed in the Code of Civil Procedure, 1908 for the trial of suits shall, so far as applicable be followed.

11. In disposing of an application under these rules, the Court may make such orders as to costs as it may consider just.

7A(i). Save in cases where the court dispenses with the requirement of sub-clause (a) and (b) of clause (4) of Article 226 of the Constitution in a petition under clause (1) containing a prayer for interim order, no interim order shall be made except where copies of such petition along with all documents in support of the plea for interim order has already been served by the petitioner on each of the respondents and is accompanied by an affidavit of service.

(ii) Unless otherwise ordered, the petition referred to in clause (i) shall be listed for hearing on a date not before the expiry of seven clear days from the date of such service. On such date the respondents will have an opportunity of being heard in regard to the prayer of interim order.

(iii) For the purposes of Rules 7A and 7B it will be sufficient compliance of service on the respondent when a certificate of posting is enclosed along with the affidavit regarding the service.'

"7B(i) In cases where the Court dispenses with the requirements of sub-clauses (a) and (b) of clause (4) of Article 226 of the Constitution, the Court may entertain the petition ex-parte, but if the Court makes an interim order on a petition so entertained, the petitioner must, within seven days, serve copies of such petition and of all documents in support of the plea for interim order on each of the respondents and file an affidavit of such service.

(ii) On the service of copies of such petition and of documents in support of the pleas for interim order in accordance with (i) above, the respondents or any of them will be liberty to make the appropriate Bench of vacating or modifying the interim order already made. The matter shall be posted for orders before such Bench not earlier than seven days unless so moved, and not later than fourteen days from the date of interim order."

"7C Notwithstanding anything in Rule 7A or Rule 7B, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under Clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government.

"7D. Notwithstanding anything in Article 226 of the Constitution of India, the Court shall not consider the constitutional validity of any Central Law in any proceedings under that Article."

"7E. For the purposes of Rules 7A and 7B where a respondent is represented by an advocate in the case, it would be due compliance with the requirements of the aforesaid Rules, so far as the respondent so represented is concerned, if copies of such petition and of all documents in support of the plea for the interim order are served on the advocate concerned."

RULES GOVERNING REALISATION OF COSTS AWARDED IN WRIT PETITIONS, OTHER THAN THE WRITS IN THE NATURE OF HABEAS CORPUS

12. Any party to a proceeding under Art. 226 of the Constitution of India desiring to obtain execution of the order relating to cost awarded in such proceedings shall apply to the Court by a stamped petition.

13. The Court, thereupon, shall direct the party against whom the costs are awarded to deposit the amount in Court within such time as it deems fit, and upon his failure to deposit the amount within the prescribed period, the Court shall order issue of a certificate for the recovery of costs and may also include the costs of the proceedings before it.

14. The certificate shall be issued under the signature of the Deputy Registrar and seal of the Court and shall be executable as a decree of the Civil Court.

15. The certificate shall be executable by the District Judge of the Division in which the party from whom the costs are to be recovered actually resides or carries on business or work for gain or has some property.

16. The Court to which the certificate is issued shall execute it as a decree received on transfer for execution from another Court.

17. The form of the certificate shall be as prescribed in rules (Form of certificate attached).

18. In the absence of any special direction in the judgment, such costs shall be deposited in, and withdrawn from, the Accounts Department of this Court in the same manner as in the case of paper-book costs.

FORM

(See Rule 17)]

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
MIZORAM, TRIPURA AND ARUNACHAL PRADESH)

Certificate of non-satisfaction of costs.

(Rule 17, Chapter V-A)

Miscellaneous Petition No..... of

Whereas the petitioner/respondent in the above case has applied to the Court for recovery of costs amounting to Rs..... from respondent/petitioner and the latter has failed to deposit the amount of Rs..... payable to the petitioner/respondent;

And whereas a Bench of the Court consisting of the Hon'ble Mr. Justice and the Hon'ble Mr. Justice has ordered issue of a certificate.

It is hereby certified that the petitioner/respondent is entitled to recover the amount of Rs..... from respondent/petitioner.

Given under my hand and the seal of the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura) in Assam this day, the19 .

By order of the High Court

Seal

Deputy Registrar

Forwarded to the District Judge at for necessary action.

SCHEDULE¹³

[See Rule 1]

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR MIZORAM,
TRIPURA AND ARUNACHAL PRADESH)

AT GUWAHATI

Revisional Jurisdiction

To (full name of the Chief Justice) and his Companion Judges.

Here should be stated definitely the nature of the remedy sought, i.e., whether a direction, an order or a writ and if a writ, whether mandamus, prohibition, quo warranto or certiorari. Here should be inserted as briefly as possible the particular right or rights whose infringement is alleged. To be omitted if the application is for purposes other than the infringement of a right conferred by Part III Here specify the particulars or the nature of the impugned order/notice dated..... e.g. an order of reversal/dismissal/ suspension/ demotion etc. (Annexure.....)

In the matter of an application for

For the enforcement of the right of

Conferred by Part III of the Constitution of India

Note 13: Schedule. The Schedule was substituted vide Correction Slip No. 48 dated the 18th August 1970. Notification No. H.S. XI/41/65/70/7520/RC.

Names and particulars of parties

And in the matter of

Then should follow a statement, divided into paragraphs, setting out the facts chronologically which have given rise to the cause of action and then the prayer showing the nature of the order sought and against whom it is sought.

Note:— Every application shall have an index referring serialim to application, affidavit, and each annexure and furnishing the number of the page at which application, affidavit and each annexure commences.¹⁴

NOTIFICATION

No.HC.III-12/85(Pt)/84-90/G

Dated 24.1.2002

Henceforth, except, otherwise, specifically directed, while listing a Writ Appeal for motion/admission/orders/hearing, case records of the relevant Civil Rule/Writ Petition from which the writ appeal has arisen must also be laid before the Bench. However, Writ Appeals, relating to Outlying Benches, may be laid for motion/admission without the relevant Civil Rule/Writ Petition and if such appeals are listed for hearing, relevant case records of the Civil Rule/Writ Petition shall, unless otherwise specifically directed, be laid before the Bench alongwith the appeal.

By Order etc.
Sd/- I.A. Ansari
Registrar General

CHAPTER V-B¹**RULES FOR APPLICATIONS UNDER ARTICLE 227(1) OF THE
CONSTITUTION OF INDIA**

1. (a) An application under Art. 227(i) of the Constitution of India shall comply as far as may be, with the provisions of Chapters IV, V and V-A of the Rules of the High Court and shall also state clearly —

(i) the name, description and place of residence of each applicant and of the non-applicant;

(ii) the name of the Court and Judge by whom the decree or order objected to was passed; and if the decree or order was passed in appeal, the name of the original Court and of the Judge presiding over it;

(iii) the date or dates of the decrees or orders of the lower Courts;

(iv) the nature of the relief and the direction or order sought from the Courts;

(v) the grounds on which the relief is sought and also such material facts as may be necessary for the proper determination of the case;

(vi) where a previous application has been made on the same facts, the applicant shall give all details thereof and shall also indicate the decision thereon.

(b) The application shall be accompanied by the order of decision (if any) complained of and on affidavit verifying the facts relied on.

2. Such applications shall be registered as [Civil Revision Petition (C.R.P. Art.227)]²

3. Such petition shall be heard by a single Bench. However, the presiding Judge of the single Bench may refer the matter to a Division Bench if the matter involves substantial question of law or if he thinks that it is just and expedient to be disposed of by a larger Bench.

4. The application shall be laid before the appropriate Bench as early as possible for motion hearing of which notice shall be given to the applicant or his agent or counsel.

5.(a) No records of a case or proceeding in possession of any Court over which superintendence is claimed shall be requisitioned unless ordered by the Court either of its own motion or upon an application made by any of the parties to the application.

Note 1: This Chapter V-B was inserted by Correction Slip No. 81, Notification No. HC XI-10/79/16, 766/RC dated 28th December, 1980, published in the Assam Gazette dated 7.1.1981.

Note 2: Amended vide Notification No. HC.XI-03/2006/168/RC. dated the 22.02. 2006

(b) Every application made under R. 6(a) shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the case in which the application is made, and that the applications cannot without reasonable delay or expenses 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 in the interest of justice.

6.(a) All questions of fact arising for determination under this Part shall be decided ordinarily upon affidavit, but the Court may direct that such other evidence be taken as it may deem fit.

(b) Where the Court orders that certain matters in controversy between the parties shall be decided on oral evidence, it may either itself record the evidence or may direct any Court or a Commissioner appointed for the purpose to record it in accordance with the procedure prescribed by law.

7. The Court, while granting any interim relief or stay, may impose such terms and conditions including deposit of cost as it thinks fit.

8. The Court may in its discretion either before the non-applicant is called upon to appear and answer or afterwards on the application of the non-applicant, demand from the applicant security in cash for the costs of the application.

9. In the absence of any special direction in the judgment such security shall be deposited in, and withdrawn to accounts department of this Court in the same manner as in the case of paper book cost.

10. At the conclusion of each case, the Court shall pass such orders for the refund or disposal of the security in deposit as it may consider necessary. When the Court fails to make an order, the party claiming to be entitled to the refund or payment shall make a stamped application for the purpose and it shall be laid before the Court for orders in motion.
