

3. Administrative Work, Office management and Supervision	...	366
<b>CHAPTER 45</b>		
Miscellaneous Instructions (Rules 854 to 883)		
1. General	...	368
2. Construction and Repair of buildings for Judicial Officers	...	372
3. Dress of Judicial Officers	...	372
4. Temporary additions to the Judicial staff and transfer of cases	...	373
5. Casual Leave	...	375
6. Leave of the Officers of the Assam Judicial Services	...	376
<b>CHAPTER 46</b>		
Inspection of Courts and Offices (Rules 884 to 895)		
	...	380
<b>APPENDICES</b>		
Appendix-A- The Bengal, Agra and Assam Civil Courts Act, 1887		385
Appendix-B- The Bengal, Bihar and Orissa and Assam Laws Act, 1912		406
Appendix-C- Notification - (Dated 16-2-2014)		414
Appendix-D- The Gauhati High Court and District Courts e-Court (Recruitment and Promotion) Service Rules, 2015		415
Appendix-E- Trial Courts and First Appellate Courts (under the Gauhati High Court) Case Management Rules, 2007		438
Appendix-F- The Appointment of Arbitrators by the Chief Justice of the Gauhati High Court Scheme, 1996 (Notification)		451
		455

# CIVIL COURT RULES AND ORDERS

## OF

# THE GAUHATI HIGH COURT

[HIGH COURT OF THE ASSAM, ARUNACHAL PRADESH, MEGHALAYA,  
MANIPUR, MIZORAM, NAGALAND AND TRIPURA]

### PART-I

### RULES RELATING TO THE CIVIL PROCEDURE CODE

#### CHAPTER 1

#### COURT-HOURS, CAUSE LIST, PLEADINGS, PETITIONS, ETC.

##### 1. General

1. (1) The ordinary hours of sitting for all Courts shall be 10-30 a.m. to 4 p.m. (Indian Standard Time).

(2) There shall ordinarily be an interval (not exceeding half an hour), at about 1 p.m. (Indian Standard Time).

["(3) On the second and the fourth Saturdays of every month the Courts will remain closed. On the remaining Saturdays of every month the hours of sitting for Courts will be as in sub-rule (1) above."]<sup>1</sup>

(4) Judicial Officers shall not close their Courts except on the days indicated in the List of Holidays prescribed under Section 15 of the Civil Courts Act, 1887, without the previous permission of the High Court. In cases of emergency the Judicial Officers may suspend the work of the Court as may be necessary.

2. Administrative or departmental work should be done either before the sitting, or after the rising hour, or after the disposal of the day's judicial work on the Bench, should it occur earlier. On

1. Substituted sub-rule (3) of Rule 1, *vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC, dated 14th June, 2002 (w.e.f. 14-6-2002) [Published in the Assam Gazette Part-II B, dated July 17, 2002].

**Note** – Before substitution of sub-rule (3) of Rule 1, read as follows—

"(3) Courts may close at 1 p.m. on Saturdays, if the state of the work permits."

days when the administrative work to be done is heavy, presiding Judges may rise half an hour earlier for the purpose.

3. The presiding Judge shall insert in the Diary [Form No. (R) 11] with his own hand (i) his hour of arrival in office, (ii) the hour at which he takes his seat for judicial work, (iii) the hours between which administrative work is done, and (iv) the hour of rising.

4. The working hours in every judicial office shall ordinarily be from half an hour before and till half an hour after, the sitting hours as fixed by Rules 1 (1) and 1 (3).

**Note**—The Attendance Register should be submitted punctually at 10-35 a.m. to the Sheristadar, who should note in red ink the fact of any officer's late attendance. The Attendance Register should be laid every day before the presiding Judge for his signature.

5. Judicial work (*ex-parte* or otherwise), involving trial of cases or hearing of petitions shall not ordinarily be done in chambers or at the residence of judicial officers.

6. Without the consent of parties, and in the absence of urgent necessity, no civil trial should proceed on Sundays or *Gazetted* holidays :

Provided that on such days, the Court shall not refuse to do any act or make any order urgently required which may with propriety be done or made out of Court.

7. The District Judge may direct that during the Puja holidays, a special officer with sufficient pecuniary jurisdiction shall deal with applications for execution of decrees which are extremely emergent in their nature and that such decrees be transferred for execution to such officer's file immediately before the closing of the Courts for the holidays by the Courts which passed them.

8. Plaints, memoranda of appeals, original petitions and applications for executions of decrees must be presented during the working hours as prescribed by Rule 4.

9. A diary in the prescribed Form No. (R) 11 to be called the "Diary of the Court of .....at....." shall be maintained by each Civil Court in the following manner—

(1) Each case fixed for any day shall be entered in advance immediately upon a date or adjourned date being fixed, each such entry showing the purpose for which it is set down on each date.

**Note**—The purpose should be indicated by suitable headings written in red ink, e.g., for -- Filing deficit Court-fee, *etc.*, Final Disposal at first hearing, Ascertaining whether suit will be defended, filling written statement, Settlement of issues, Compliance with orders regarding discovery, admission, *etc.*, Investigation of pauperism, Substitution of heirs, Compromise, Hearing of interlocutory application (state nature), Commissioner's report, Filling award, Settling the final order, Peremptory date of hearing, Peremptory hearing, Argument, Judgment, Orders, *etc.*, *etc.*

When fresh summonses have to be issued for non-service, death of party or other reasons, such cases are to be entered under the heading "For issue of process" or "For appearance of defendant" as the case may be.

(2) The topmost heading should be "For peremptory hearing" and under each heading should be grouped separately each cases of class in their chronological order according to the dates of their institution.

**Note**—In determining the age of a case, no account should be taken of the date of its restoration or receipt on remand or by transfer.

(3) Appeals and Miscellaneous cases should also be shown in the Diary in the above manner. Execution cases should be noted last of all, also arranged according to their class and in chronological order.

(4) The Diary will be so arranged as to mark a clear division between defended and undefended cases. Cases on the undefended list should also be shown under suitable headings as above grouped separately class by class and arranged in their chronological order.

**Note**—When a defendant fails to appear on the first date fixed and service of summons is proved, the case, if not disposed of for any reason on that date, will go to the undefended list of the adjourned date in the Diary.

(5) Progress made in each case shall be shown briefly under each date, as also the reason for adjournment and at whose instance.

(6) The number of witnesses examined in each case shall appear in the appropriate column.

(7) A running total in red ink shall be inserted from day to day with the object of showing the total number of witnesses examined during each quarter of the year, a new serial number for them being started at the beginning of each quarter.

(8) An officer who on any day performs criminal duties in addition to his work as a civil judicial officer, shall note in the Diary for that day how his time has been distributed between these two classes of work, fractions below one quarter of a day being disregarded.

(9) The presiding Judge shall insert with his own hand in the appropriate place the hours of attendance *etc.*, as required by Rule 3 and the hours of sitting or rising; if unusually late or early on any day, the insertion shall be accompanied by a short note, explaining the reason for such late or short sitting.

(10) The Diary shall be signed each day by the presiding Judge after a careful scrutiny on completion of all the entries therein.

**Note**—All the above instructions contained in the clauses of this rule are intended to be most rigidly followed and are not to be allowed to be reduced to a formality. In particular, details required by sub-rule(9) (*vide* Rule 3), shall be representative of actual facts.

**10.** (1) A daily Cause List in the prescribed Form No. (M)2 shall be maintained in every Court in the form of a register and laid at some conspicuous part of the Court-Room for the inspection of all concerned, not later than 12-30 p.m. on the working day preceding that to which the Cause List relates Cases and appeals shall be shown in the order in which they appear in the Diary. Judgments ready for delivery shall be notified on the Cause List for the day. Execution and Miscellaneous cases may be shown in the same list or separately. For the purposes of the Cause List a case is sufficiently indicated by its number, year and class.

(2) At the close of the day, entries should be made in the Daily Cause List showing in addition (a) the results of all cases disposed of, (b) dates or adjourned dates fixed during the day of cases not disposed of, and (c) any order requiring specific action.

**Note**—1. The Cause List shall be prepared in English until replaced by regional language or Hindi.

**Note**—2. The list shall bear the signature of the presiding Judge whose duty it is to see (1) that the list is laid at some conspicuous part of the Court Room, with column 1 filled in, not later than the hour fixed in the rule on the day preceding that to which the list related and (2) that proper entries are made in columns 2 and 3 of the list at least half an hour before he leaves Court on the day to which the list relates.

**11.** A Register in the prescribed Form No. (R) 33, shall be maintained in every court showing the processes, process fees and other costs due from the parties and the latest date of filling shall be daily written up by the assistants concerned and signed by the presiding Judge below the last entry for each day and laid at some conspicuous place in the Court Room between the hours

of 12-30 and 4-30 p.m. (In Shillong upto 4 p.m. only during winter season) for inspection by parties or their pleaders.

**12.** For sealing judgment, writs, decrees, processes, sale-certificates, certificates of non-satisfaction of decrees and copies, *etc.*, the regular seal of the Court shall be used by all judicial officers. In any other connection, smaller seals as supplied should be used.

**Note**—1. The utmost care is to be exercised over the custody of the above and of all other seals in the possession of a court, including the date seal.

**Note**—2. The use of name seals whether of judicial or of ministerial officers is prohibited.

**13.** Any document or proceeding required to be presented to or filed in Court, if sent by post, shall be returned with a note of the reason for returning it. A document not so required to be presented or filed may, if sent by post, be accepted by the Court in its discretion.

## **["2. Pleading, Petitions, Affidavits and Caveats"]<sup>1</sup>**

### **A—Pleadings, petitions *etc.***

**14.** All pleadings, memorandum of appeals original petitions, affidavits, vakalatnamas, applications and papers of a similar character presented to the Court shall be—

(1) Written, type-written or printed fairly and legibly on foolscap water marked paper, known as “pie” or “cartridge” or “Demi” paper obtainable from the Treasury and sold by all licensed stamp vendors or any other stout paper of foolscap size if such pie, cartridge or demi-paper is not available, one side of the paper only being used and a quarter margin together with at least one and a half inches of open space being left at the top and bottom of each sheet;

**Note**—Pleadings and other papers which are written illegibly or cannot be easily read should be returned to be written legibly.

(2) Dated and signed by the person presenting and also, where necessary, by such other person as may be law be required to sign them;

(3) Signed by the scribe or types who shall state the capacity in which he writes or types them and if he is the registered clerk of a legal practitioner, his registered number also.

1. Substituted sub-heading 2, after Rule 13 *Vide* C.S. No. 22, Notification No. HC XI-4/81/255/RC. dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002. {w.e.f. 14-6-2002}] pp-309-321.

**Note**—Before substitution of subheading 2 read as follows —  
“2. Pleadings, Petitions and affidavits”.

**Note**—A Mukhtar is not permitted to sign pleadings.

**15.** The registered address for service filed with every pleading (Whether by the plaintiff or the defendant) under Order 6, Rule 14-A shall state the following particulars:—

- (i) the name of the street, lane or section and number of the house (if any);
- (ii) the name of the town or village;
- (iii) the post office;
- (iv) the district; and
- (v) the ["Civil Judge (junior Division)"]<sup>1</sup> (if in Tripura)<sup>2</sup> or the District Court (if outside Tripura)<sup>2</sup>.

**16.** All petitions requiring judicial investigation or determination unless filed with an affidavit in support thereof should be verified in the manner prescribed by Order 6, Rule 15.

#### **Case Law**

This rule provides that all petitions requiring judicial investigation or determination shall be accompanied by affidavit or must be verified. In **Mango Ice Cream Co. and another -Vs- Dena Bank**, reported in (1992) 1 GLR 143 : 1992(1) GLJ 144, High Court rejects the requisition petition supporting the view of lower court which rejected the adjournment petition.

**17.** Every interlineation, erasure or correction in a petition or pleading shall be initialled by the party or recognised agent or pleader presenting it. In the case of an affidavit, such authentication shall be made by the initials of the Commissioner concerned. Numbers should be expressed in figures, and when Indian dates are given in any pleading, petition, affidavit, etc., they should ordinarily be followed by the corresponding English dates.

**18.** (1) In every pleading, petition, etc., names of parties should bear consecutive numbers and a separate line should be allotted to the name and description of each person.

(2) These numbers should not be changed, and in the event of death of a party during pendency of the suit or proceeding, his heirs or representatives, if more than one, should be shown by

1. Substituted for the word "Munsiff" *Vide* C.S. No. 22, Notification No. HC XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002. (w.e.f. 14-6-2002), pp-309-321.]

2. Substituted for the words "(if in Assam) and (if outside Assam)" *Vide* C.S. No. 3, Notification No. HC.XI-11/69/8351/R.C. Dated 5th September, 1973.

sub-numbers. Where fresh parties are brought in, they are to be numbered consecutively to the plaintiffs or defendants as the case may be already in the suit. Where any party whose name is entered in the register of suits dies or fresh parties are added, the necessary correction should be made in the Register forthwith.

**19.** The Court should satisfy itself as to the identity of every person presenting a pleading, affidavit or petition, who is not a pleader or mukhtear or registered clerk.

**Note**—For the powers of mukhteers and registered clerks to present pleadings, petitions or affidavits, see Rule 804.

**20.** (1) Petitions containing argumentative matter (e.g., quotations and discussions of the effect of certain sections of Acts, or of certain rulings of the High Courts, etc., etc.) or things which are irrelevant to the matter in hand should be returned to applicants without any order except an endorsement that the application is returned for non-compliance with the provisions of this rule.

(2) Applications in regard to distinct subject-matters shall be made in separate petitions.

(3) A petition should not ordinarily contain more than one prayer or one series of alternative prayers of the same kind.

(4) An original petition shall in addition to the particulars required by law also state the Act and section or rule or other authority under which it is presented.

(5) Every interlocutory application or petition filed in a suit or proceeding valued at Rs. 50 or less shall display clearly, preferably in red ink, the fact that it is so - valued by a note to that effect in its top left hand margin, in order to enable a proper check to be made of the court-fee paid.

**21.** In contested original suits, no written statement, list of documents, or application which the Judge may consider material, shall ordinarily be filed unless copies thereof have previously been served on the pleader for each set of parties whose interest are not joint. Provided that if, for any reason, copies cannot be so served, they may be filed in Court together the original written statement, list or application. Pleadings served with such copies shall give a receipt on the original written statement, list or application. The copies shall be authenticated by the signatures of the pleaders of the parties on each page on the bottom lefthand margin.

**22.** It should be clear every plaint how the valuation has been calculated. Where this is not so or where it appears to the officer receiving and examining the plaint that there is manifest undervaluation, the plaint shall be placed before the presiding Judge for orders.

**23.** Written statements and petitions in suits or cases fixed for the day must be filed at least within fifteen minutes of the time fixed for the sitting of the Court in Rules 1(1) and 1(3), and all other petitions and documents by such hour, not beyond 1 p.m. as may be fixed by the Court, except papers the occasion for the filing of which arises during the trial. Petitions and documents presented after the prescribed hour shall not be accepted unless good cause is shown for delay.

**24.** "(1)" Petition should always be taken in open Court, and usually at the commencement of the daily sitting of the Court. The majority of petitions can be disposed of by an order passed in court as soon as they are filed. Where a reference to the record or to other papers is necessary before an order can be made, petitions should, unless they are of an exceptionally urgent nature, be brought up with such record or papers on the following open day and order should then be passed in Court.

- ["(2) (i) every Application under Order 9 Rule 9 and Order 9 Rule 13 shall be accompanied by written up notices annexed with copies of the application and the process fee and postal requisite to send by Registered post for service thereof on the opposite party. Unless so accompanied order for issue of notice shall not be passed. The notice also may be served by hand and affidavit filed in support of it;
- (ii) the notice as aforesaid shall specifically state that the date fixed therein is the date of hearing of the application and that the opposite party may file the written objection if any on the said date itself;
- (iii) every application shall be disposed of on merits even ex parte within a month of service of notice;
- (iv) in case where the applications as aforesaid are made within 7 days of the order dismissing the suit or passing the ex parte decree notice of the application may simultaneously be served on the pleader of the opposite

party in the suit in which the applications are made in the light of the provisions of Order 3, Rule 5 of the code.

- (3) (i) when temporary injunction is granted immediately steps shall be taken. The notice shall be accompanied by copies of the plaint, the affidavit, the petition and of the documents if any as there are opposite parties to go along with the notice for the opposite party by Regd. Post or by hand. Unless so done, order on the petition passed, shall fall through automatically;
- (ii) in all cases where the Court decides to grant the injunction without notice to the opposite party reasons for doing so shall be recorded and the order should not be continued beyond 7 to 10 days as the circumstances of the case may require. The Court shall finally dispose of the application in the light of provisions of Order 39 Rule 3A."<sup>1</sup>

#### **B—Affidavits**

**25.** All Sheristadars shall be *ex-officio* Commissioners of affidavits in respect of matters and causes arising within, and subject to the jurisdiction of, the respective Courts in which they are employed.

**Note**—In single ["Civil Judge (Junior Division)"]<sup>2</sup> during the temporary absence of the Sheristadar the next senior-most ministerial officer shall be *ex-officio* Commissioner until the return of the Sheristadar to duty, unless the Court otherwise directs.

**26.** (1) Every affidavit to be used in a Court of Justice shall be entitled "In the Court of ..... at ..... " naming such Court.

(2) If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it, must also be entitled in the cause.

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

**27.** Every affidavit shall be drawn up in the first person and divided into paragraphs, numbered consecutively, and each paragraph, as nearly as may be, shall be confined to a distinct portion of the subject.

1. Rule 24 renumbered as Rule 24 (1) and added new sub-rule (2) and (3) *Vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC, Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July, 17, 2002], pp-309 (w.e.f. 14-6-2002).  
2. Substituted for the word "Munsiffs". *by Ibid.*

**28.** Every person, other than a plaintiff or defendant in suit in which the application is made, making any affidavit, shall be described in such manner as shall serve to identify him clearly; and where necessary for this purpose, the affidavit shall contain his full name, age, father's name, profession or trade and true place of residence, and shall be subscribed either with his signature in his own hand or his finger-impression.

**29.** Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts, which are within his knowledge, and such facts shall be stated in separate paragraphs.

**30.** When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words – “I affirm” (or “make oath”) “and say”.

**31.** Every affidavit should clearly express how much is a statement of the declarant's knowledge and how much is a statement made on his information or belief and much also state the source or ground of the information or belief with sufficient particularity.

**Note**— In affidavits under Order 32, Rule 3(3), the officer before whom such affidavits are sworn should see that the words “and that he (she) is a fit person to be so appointed” are always inserted.

**32.** (1) When a particular fact is not within the declarant's own knowledge, but is stated from information obtained from others the declarant must use the expression “I am informed” and, if such be the case, should, add “and verily believe it to be true”, and he must also state the source or ground of the information or belief, and the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he received such information. When the statement rests on facts disclosed in documents or copies of documents, procured from any Court of Justice or other source, the declarant shall state what is the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

(2) Documents in the possession of the deponent or his principal (other than those on the records of the case) referred to by affidavit shall be annexed to the affidavit and marked in the same manner as exhibits admitted by the Court and shall bear the certificate which shall be signed by the Commissioner before whom the affidavit is made.

**Note**—A Mukhtarnamas of persons signing on behalf of the parties are exempted for the provisions of clause (2) of this rule.

**33.** Except under the special orders of the Court, no document being an exhibit to an affidavit or verified petition or the materials for any application shall be given back unless the document be an original document, in which case it may be taken back on an order of the Court, a certified copy being retained.

**34.** Every person making an affidavit, if not personally known to the Commissioner, shall be identified to the Commissioner by some one known to him, and the Commissioner shall state at the foot of the affidavit (a) the name and description of the person identifying, and (b) the time and place of the making of the affidavit. He shall also, for the purpose of identification mark and initial exhibits if any, annexed to in the affidavit.

**35.** Where the declarant is a pardanashin woman, she shall be identified by a person to whom she is known and before whom she is accustomed to appear unveiled and such person shall at the foot of the affidavit certify that the declarant was identified by him and sign his name thereto, and shall also prove such identification by a separate affidavit.

**36.** (1) The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if such person states that he has not read the affidavit, or appear not fully to understand the contents thereof, or appear to be blind, illiterate or ignorant of the language in which it is written the Commissioner shall read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same in a language which both he and the Commissioner understand.

(2) When an affidavit is read, translated or explained as herein provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant seemed perfectly to understand the same at the time of making the affidavit and made his signature or finger impression in the presence of the officer; otherwise the affidavit shall not be used in evidence.

**37.** The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous and may order the cost

of any application to strike out such matter, if granted, to be included in the costs payable by the offending party.

**38.** In administering oaths and affirmations to declarants, the Commissioner shall be guided by the provisions of the Indian Oaths Act, X of 1873. The provisions of Rules 303 and 304 apply, *mutatis mutandis* to affidavits under the present rules, and the following forms are to be used—

### OATHS

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

### AFFIRMATION

I solemnly declare that this my declaration is true, that it conceals nothing, and that no part of it is false.

**39.** The following forms of affirmation and certificate shall be used by the Commissioner appointed to administer oaths or affirmation—

#### (1) Affidavit on solemn affirmation

(Cause title)

I, A.B. son of C.D., by religion ..... by Nationality of ..... years of age (state occupation) residing at ....., do solemnly and sincerely affirm (or make oath and say) as following —

- 1.
- 2.
- 3.

Solemnly affirmed (or sworn) at the  
office of (the Court of the ["Civil Judge  
(junior Division)"]<sup>1</sup> of ..... ) this .....  
day of ..... 20 ..... at (state hour)  
before me.

(Signed) A.B.

(Signed)

*Sheristadar of the said Court.*

1. Substituted for the word "Munsiff" Vide C.S. No. 22. Notification No. HC. XI-4/81/255/RC, dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 17-7-2002)] pp-309-321.

#### (2) Certificate under Rule 36 when declarant is unacquainted with the language of the affidavit, or is blind or illiterate

Solemnly affirmed (or sworn) at the office of  
(the Court of the ["Civil Judge (Junior Division)"]<sup>1</sup>  
of ..... ) this ..... day of ..... 20 ..... at  
(state hour) before me, the contents of this  
affidavit (or solemn affirmation) (and the exhibits  
therein referred to) having been first truly and  
audibly read over to the declarant in ..... he  
being illiterate or unacquainted with English (or  
being blind), who appeared perfectly to under-  
stand the same, and made his finger impression  
thereto (or signed the same) in my presence.

The declarant is personally known to me or  
identified by (state name and address) who is  
known to me.

(Signed)

Sheristadar.

(Signed) A.B.

#### (3) Certificate under rule to be endorsed on an exhibit to an affidavit

(Short cause title)

This is the exhibit marked "A" referred to in the affidavit of  
A.B. sworn (or affirmed) before me this ..... day of ..... 20.....

(Signed)

Sheristadar.

#### ["C—Caveat"]<sup>2</sup>

**40.** (1) A caveat shall be lodged with the Presiding Officer of the Court in the form of an application required under Section 148-A C.P.C. duly verified. The caveat may be presented by the caveator personally or through his Advocate. The application must set forth the name, place of abode, description, occupation and the address for the service on the caveator and where he is represented by an Advocate the name and full address of the

1. Substituted for the word "Munsiff" Vide C.S. No. 22. Notification No. HC. XI-4/81/255/RC, dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 17-7-2002)] pp-309-321.  
2. Added sub-heading "C-Caveat" after Rule 39 by *Ibid*.

Advocate. Such address for service on the caveator must be within a radius of 5 miles from the court house and shall hold good in all subsequent stages of the proceeding.

(2) The caveat shall further set forth the following particulars:—

- (i) Name, description, place of residence and full address of the person by whom an application has been or is expected to be made;
- (ii) Full particulars of the claim or the subject matter in respect of which an application is expected to be made in a suit or proceeding, and the nature of relief likely to be sought; If an application has been made, particulars of the application and the suit or proceeding;
- (iii) Where the subject matter is immovable property, description of the property sufficient to identify it.

(3) No caveat shall be entered in the Register unless the application is accompanied by a self addressed envelop with requisite postal stamps for registration and other costs required to be deposited by the Court for service of notice upon the caveator under Section 148-A(3).

**[40A.** A Court fee of Rs. 11 or Court fee prescribed by the Local Court Fees Act shall be paid affixed on every caveat.

**40B.** (1) Every caveat shall be entered in the Register of Caveats maintained for the purpose and examined by the Sheristadar of the Court. If he finds that the Caveat complies with all the requirements he shall make an endorsement on the Caveat “examined and may be registered”. If he thinks that the Caveat does not comply with the requirements, he shall place the matter before the Presiding Officer for orders.

(2) Caveat returned for non-compliance with these rules or provisions of Section 148-A of the Code may be represented after rectification within the time specified.

1. Deleted the heading of Rule 40 and Rule 41 to 45 renumbered as Rules 40A to 40E, *Vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC., dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002)].

**Note** (1) Before deletion of Heading of Rule 40, read as follows—

“The manner for filling caveats in all Court subordinate to the High Court and necessary forms for service of notice etc., under Section 148-A C.P.C.”

**Note** (2) Re-numbered Rules 40 to 45, which was added *vide* C.S.No. 10, Notification No. HC.XI-1/69-79/5404/RC, dated 17th March, 1980.

(3) The affidavit shall state the right and the interest of the Caveator and the grounds of the objections to the application.

(4) The caveat shall also be accompanied by a notice in duplicate duly filled in by the party or his counsel together with the required process fee for service of notice on the Caveator as soon as an application is filed.

(5) Immediately upon entry in the Register of Caveates the Sheristadar shall place the Register before the Presiding Officer for necessary orders. After lodgement of a Caveat, the Caveator or the person by whom the caveat has been lodged, (who shall also be referred to as the Caveator) shall cause due notice of the Caveat served in accordance with the provisions of Section 148-A(2).

**40C.** Where a Caveat has been lodged, the Caveator shall serve without delay, notice of the Caveat by registered post acknowledgement due on the person by whom the application has been or is expected to be made and file in Court in proof therefore.

**40D.** After a Caveat has been lodged under Section 148-A(1), if any application, suit or appeal is filed in respect of which a Caveat has been lodged, the Court shall serve a notice of the application, suit or appeal on the Caveator provided the Caveator had deposited the requisite costs and expenses for such service of notice upon him.

**40E.** A Caveat may be withdrawn by a Caveator on an interlocutory application supported by an affidavit.

## CHAPTER 2

### ["PRESENTATION OF PLEADING AND REGISTRATION AND EXAMINATION OF PLAINTS"]

**41.** An order appointing an officer to receive complaints under Order 4, Rule 1(1) must be in writing.

**Note**—This rule applies also to memoranda of appeal [Order 41, Rule 1(1)].

**42.** (1) Every complaint brought for presentation shall have affixed to the top left hand corner of its first page, a slip of paper in the following form with the particulars required written on it excepting the filing number which should be left hand—

No. ....  
Class of suit .....  
Plaintiff .....



Defendant .....  
 Value of suit .....  
 Pleader .....

["(2) Every plaint brought for presentation shall be accompanied by—

- (i) As many copies of the plaint as there are defendants, unless the court for sufficient reason like length of the plaint or the number of defendants permits the plaintiff to present along with the plaint like number of concise statements of the nature of the claim and the relief claimed in the suits;
- (ii) Duly filled up summons in prescribed form and fee for service thereof.

(3) Unless the court dispenses with service by registered post under the proviso to rule 19A of Order 5, the plaint shall also be accompanied by a second set of written up summons for additional and simultaneous service by registered post.

(4) Where the provision of sub-rule (2) above is not complied with the court shall fix a date not later than 7 days of presentation of the plaint requiring the plaintiff to comply with the said provisions. The court may grant a further extension of time on being moved so to do by a verified application showing good grounds for the inability to comply. A plaint remaining bereft of the accompaniments under sub-rule (2) above for a period of fifteen days in total shall be rejected under order 7 Rule 11(e)."<sup>1</sup>

**43.** (1) Immediately on receipt of a plaint, a serial (consecutive), number shall be marked on it, to indicate the sequence of filing, the same numbers being simultaneously noted on the attached slip of paper. The slip shall then be detached, stamped and made

1. Substituted Heading of "Chapter 2" and existing Rule 42 re-numbered as Rule 42(1) and added new sub-rule 42(2), 42(3) and 42(4) and deleted "Note" of Rule 42, *Vide* C.S.No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (W.e.f. 14-6-2002)] pp-309-321.]

**Note** (1) Before substitution Heading of Chapter 2, read as follows—

"PRESENTATION, REGISTRATION, ETC., AND EXAMINATION OF PLAINTS"

**Note** (2) Deleted "Note" of Rule 42, read as follows —

"**Note**—It should be particularly noted that additions made by the High Court to Schedule I of the Civil Procedure Code require that every plaint shall be accompanied by the necessary number of its copies draft, forms of summons, and fees for the service thereof (Order 7, Rule 9 (1-A), and a statement of the party's address for service (see Rule 15 and Order 6, Rule 14-A)."

over to the person presenting the plaint, then and there. These numbers shall be noted in all papers that may be filed hereafter in connection with the plaints so long as they are not registered.

**Note**— All plaints shall be marked with the serial numbers of filing on the same day they are filed and the slips attached shall be delivered forthwith. If on account of unusually heavy filing on any day it is not possible to make over all the slips of paper within the closing hour prescribed in Rule 8, those that are left must be distributed on the next following working day and the presiding Judge should see that it is done in his presence.

(2) All such plaints shall be entered at once in the prescribed register No.(R) 11-A called the Filing Register in the order in which they have been filed.

**Note**—1. On account of the heavy filings on the tamadi day, registration generally takes much time and the object of the Filing Register is to keep *adinterim* record of all plaints filed in Courts. All plaints must be entered in this register on the day they are filed, except that entry of plaints filed on the tamadi day shall not ordinarily take longer than four days.

**Note**—2. A separate volume shall be opened for each class of suit from the beginning of January each year. The number in the Filing Register will be the same as the number in the General Register of suits.

**44.** All plaints presented must, on being received, be registered (*i.e.* entered in the Register of Suits) in the same order as they appear in the filing Register, irrespective of their possible rejection (under Order 7, Rule 11) or return (for amendment or presentation to proper Court).

**45.** Every plaint shall ordinarily be registered on the day, it is received and should it be found impossible, for any reason, to register it within 24 hours of its receipt, the fact shall be reported to the presiding Judge of the Court concerned.

**Note**—Simultaneously with the registration of a plaint and the fixing of the first date, the suit should be entered in advance in that day's page of the Diary of the Court under the hearing appropriate to the purpose for which the first date is fixed.

**46.** As soon as possible after registration of the plaint, the first date fixed for the suit and the purpose for which it has been fixed shall be entered in columns 5 and 6 of the Filing Register [Form No. (R)11-A].

**47.** The first date, fixed for appeals and all petitions (excluding execution petitions) that require registrations shall be entered in a register in Form No.(M)1-Daily List. Entries shall be made therein from day to day, until the form is exhausted. If the same register is used for miscellaneous cases, appeals, etc., they should be grouped separately under the different heads. The presiding Judge shall put

his dated signature below the last entry for each day. The register shall be laid some conspicuous part of the Court Room every day by the sitting hours for inspection by the parties and the pleaders.

**Note**—Form No. (M) 1-Daily List of Petitions and Appeals registered shall be destroyed after three months.

**48.** The date of filing shall be stamped on a plaint as soon as it is filed.

**49.** (1) On presentation or receipt of a plaint, the Sheristadar of the Court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining among other things—

- (i) whether the plaint bears full court-fee stamps in accordance with the valuation put upon it;
- (ii) whether it has been properly signed and verified (Order 6, Rules 14 and 15);
- (iii) whether it complies with the requirements of Order 7, Rules 1, 2, 3, 4, 6, 7 and 8;
- (iv) [Deleted]<sup>1</sup>
- (v) whether it is accompanied by the necessary copies of plaint and process fees and draft forms of summons [amended Order 7, Rule 9 (1-A)];
- (vi) whether the documents attached to the plaint (if any) are accompanied by a list in the prescribed form [Order 7, Rule 9(1), see also Rule 9(4)];
- (vii) whether it is accompanied by the party's address as required by Order 6, Rule 14-A and contains the necessary particulars [vide Rule (15)];
- (viii) whether in the case of minor plaintiffs and defendants the requirements of Order 32, Rules 1 and 3 have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed guardian *ad-litem* of the minor defendant(s) has been filed;

1. Deleted *Vide* C.S. No. 3, Notification No. HC.XI-1/69/8351/RC. dated 5th September, 1973.

**Note**—Before deletion of clause (iv) read as follows—

"(iv) whether in a suit for recovery of rent under the Assam Temporary Settled Districts Tenancy Act of 1935 or the Goalpara Tenancy Act of 1929 or the Sylhet Tenancy Act of 1936 the provisions of Section 92 of the Assam Temporary Settled Districts Tenancy Act, Sections 126(1) and 129(1) of the Goalpara Tenancy Act and Section 149(1) and 152(1) of the Sylhet Tenancy Act have been duly complied with;"

- (ix) whether the suit is within the pecuniary and territorial jurisdiction of the Court;
- (x) whether the vakalatnama has been properly accepted and endorsed by the pleader [*vide* Rule 784 and in particular, sub-rule (5) of the rule] and whether in the case of illiterate executants, the provisions of Rules 783 and 784(3) have been complied with.

["(2) The officer examining the plaint should refer to the presiding Judge if he thinks that it should be returned or rejected for any reason. It will then be before the Judge to deal with the matter.

["(3)(a) The officer examining the plaint is required to certify on the top left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the deficiency, if any. A second Certificate is to be appended if and when the deficiency is collected;

(d) An application for extension of time for supplying the requisite court fee shall be supported by an affidavit specifying the cause of exceptional nature preventing the plaintiff from supplying the deficit court fee. The court before extending the time earlier fixed must record reasons for its satisfaction that the plaintiff was prevented by any cause of exceptional nature from supplying the deficit and that refusal to extend such time would cause grave injustice to the plaintiff;

(e) The total period of extension thus granted shall not exceed 60 days excluding 10 days fixed by the first order in the suit.]<sup>1</sup>

**[49A.** The defendant shall present the written statement of his defence on the day of his appearance in Court in response to the summons. The court may permit him further time up to a maximum of sixty days from the day of appearance with or without costs if sufficient cause is shown for his inability so to present the written statement. The application showing cause on each occasion for

1. Rule 49(3) re-numbered as Rule 49(2), Deleted Rule 49(2) and Rule 49(3)(a), (d), (e) and a new Rule 49A added *Vide* C.S.No. 22, Notification No. HC.XI-4/81/255/R.C. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002); pp-309-321.

**Note**(1)— Deleted sub-rule (2) of Rule 49, read as follows—

"(2) The officer examining the plaint is required to certify on the top left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the amount of deficiency, if any. A second certificate is to be appended if and when the deficiency is collected."

seeking time must be supported by an affidavit and shall be disposed of by the court after hearing the parties by a reasoned order.”]

### CHAPTER 3

## SERVICE OF PROCESSES AND WORK IN THE NAZARAT

### 1. Processes and their service

#### A-General

**50.** In every process and order (of whatever description), issued by a judicial officer, for whatever purpose it may be issued or made, the name of the district and of the Court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such a manner that they may be easily read.

**51.** All processes, notices, copies of complaints and other documents filed in Court (with the exception of exhibits), shall be written or typed on durable paper of foolscap size. If carbon copies are filed, they must be distinct and legible.

**Note**—As to paper for pleadings, petitions, etc., see Rule 14(1).

**52.** The hour of attendance to be entered in every summons or process issued by a court shall be 10 a.m. unless the Court otherwise directs.

**53.** When the question of requiring *de-carriere* and honorary foreign consular officers to attend Court as witnesses arises steps may be taken to minimize any inconvenience that may be felt by them by fixing a time convenient to them for recording their evidence, or where it will appear to the Court that personal attendance will occasion inconvenience to them, by issuing a commission when it is applied for.

**54.** The summons issued to a registered medical practitioner, should state for his attendance the time when the Court concerned expects to be in a position to examine him; and his examination should take place at the time indicated in the summons or as soon thereafter as practicable so as to interfere as little as possible with his professional work.

**55.** Processes should ordinarily issue in the language of the Court; but where processes are sent for service to a Court where the language is different they should be accompanied by a

translation into the language of such Court or into English, certified by the transmitting Court to be correct. Where the return of service or report stating the reason for non-service is in a language different from that of the issuing Court, it shall be accompanied by an English translation similarly certified.

**56.** Processes issued to Europeans and Anglo-Indians should be in English.

**57.** Persons on whom processes are to be served or executed shall be described in as full a manner as possible so as to identify them clearly, i.e., by a statement of name, father's name (if possible), occupation, address and such further particulars as will facilitate identification and service.

**Note**—In the case of service or execution of processes in presidency or other large towns, the name of the street, lane or section and the number of the house (if any), should be given.

**58.** (1) With their applications for issue for processes, parties shall file process-fees wherever necessary under the law and the required number of printed forms filled up in bold clear and easily legible handwriting, leaving date of appearance and of issue of process blank. Such forms are available free on application to the officer appointed by the Court.

**Note**—Every application for issue of summons to witnesses shall state clearly whether it is to be served by the party himself or through the agency of the Court. As all summonses to witnesses are ordinarily to be made over for service first to the party applying therefor a party praying for service by the Court shall state the special circumstances necessitating such mode of service [Order 16, Rule 7-A(iii)].

(2) The parties or their pleaders shall sign legibly all processes, notices, etc., in the left bottom corner, and will be held responsible for the accuracy of the information entered therein.

(3) When orders for the issue of process are passed by the Court, the date fixed for appearance will be inserted in the form and the process will be dated by an officer of the Court before the processes are signed.

(4) The presiding officer may, in his description, direct in any particular case that the forms of process be entirely filled up in the office of the Court.

**59.** A party who desires the attendance of any witness before the Court, or a Commissioner appointed to take evidence, shall file a list of the persons whose attendance he requires, stating

the full name, residence and occupation or description of each person and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case, specifying the date and description of the document so as to identify it. In the case of a witness who has to be served through Court, he shall with such list also deposit in Court the prescribed fees for service of summons and the total amount of the other expenses to which the said person is entitled and in the case of an expert or scientific witness his compensation as determined by the Court.

### **B-Service and Execution of Processes**

**60. Where there is no such separate-establishment the processes shall be issued through will be of the Deputy Commissioner or the S.D.O. as the case may be-** All summonses and processes, other than warrants of arrest, warrants of attachment of movable property and processes, copies of which are required by law to be affixed at the Court house of the issuing Court, issued by the Court at district headquarters or by the High Court, which have to be served within the jurisdiction of the outlying ["Civil judge (junior Division)"]<sup>2</sup> is in the district, shall be forwarded by the office to the Courts of the ["Civil judge (junior Division)"]<sup>2</sup> concerned and not ordinarily served by peons from district headquarters. The outlying Court will have the processes served through their respective process-serving establishment and return the same direct to the issuing Courts.

**[Note 1-**Nazir will see that these processes are forwarded to the outlying courts as early as possible but not later than 7 days from the date of receipt. Special circumstances excepted normally the outlying courts will cause the processes to be served within 15 days of receipt and return the same direct to the issuing court.

**Note 2-** The Judge of any Superior court may for sufficient reason direct on the application of the party applying for any particular process, which should ordinarily be sent for service to an outlying court, that be served or executed by a special process-serving peon from head quarters.]<sup>1</sup>

**61. Summons to defendant shall be in Form No. 2 in Appendix-B to the Code of Civil Procedure as amended by C.P.C. (Amendment) Act, 1976. Form No. (P)5 in Civil Rules and Orders**

1. Added Note 1 and Note 2 after Rule 60 *Vide* C.S.No. 22, Notification No. HC.XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002)]pp-309-321.

2. Substituted for the word "Munsiff" by *ibid*.

Vol. II may be amended suitably to accord with Form No.2 in Appendix-B to the Code of Civil Procedure."]<sup>1</sup>

**62. (a)** A summons issued under Order 5, Rule 21, shall ordinarily be sent to the Court of the ["Civil judge (junior Division)"]<sup>2</sup> within whose jurisdiction the person to be served resides, with a covering letter or an endorsement signed by the Presiding Judge.

**(b)** Whenever an officer of the Parliament or State Legislature or a member of such Parliament or Legislature, while in session is required to be examined as witness in a Court of law, the party to the legal proceedings shall make an application to the Court on this behalf and the Court after due scrutiny of the same shall move the Presiding Officer, the Parliament or the State Legislature as the case may be with a letter of request in form No.(P)10(b) for the production of the witness concerned.

**(c)** Whenever the Presiding Officer of a House of Parliament or of 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 letter to "him in" specimen Form No.(P)10(c) to his instead of the usual formal notice or summons may be issued.

### **C-Method and Proof of Service**

**63.** The signature required under Order 5, Rule 16, should in the case of illiterate person, be held to mean the thumb impression. Process-serving peons out on duty, should therefore be supplied with printer's ink, etc., for taking such impressions.

**64. (1)** A party shall not ordinarily be required to supply an identifier for the purpose of serving a summons or notice or any other process on a defendant, respondent, witness or other person

1. Substituted Rule 61 *Vide* C.S.No. 22, Notification No. HC.XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002)]pp-309-321.

**Note-**Before substitution of Rule 61, read as follows-

**"61.** The Presiding Judge of any superior Court may for sufficient reason direction the application of the party applying for any particular process, which should ordinarily be sent for service to an outlying Court, that it be served or executed by a special process-serving peon from head quarters."

2. Substituted for the Word "Munsiff" by *Ibid*.

**Note-**The full stop deleted after the word "him" and before the word "in" in the last forth lines of Rules, 62 (C) See C.S.No. 3. Notification No. HC.XI-1/69/8351/R.C., dated 5th September. 1973.

whether issued by any sub-ordinate Court or the High Court or receive from Courts outside its jurisdiction, and the serving officer shall serve the summons, notice or process after due enquiry as to the identity of the person on whom, or the house or property, where, the same is served. The serving officer shall serve in the presence of at least two independent local residents and he shall, whenever possible, obtain the endorsement by signature or thumb impression of those persons on the original process and, where he is unable to serve the process, he shall, whenever possible, obtain the endorsement by signature or thumb impression of at least two persons of the locality.

**Note 1**— There being no legal obligation upon a plaintiff, decree-holder or appellant to supply an identifier for service of any process, no process-serving peon must return unserved any notice, process or summons merely because no identifier could be had at the place of service. He must make every possible endeavour to find out the person on whom, or the house or property where the process is to be served.

**Note 2**— All process-serving peons may take necessary help of the Gaonburahs, Chowkidars, Dafadars and Panchayat members when they go out for execution of processes generally to rural areas. Whenever possible, a Gaonburahs or a Chowkidars or a Dafadar or a Panchayat members as the case may be made a witness for actual service or execution of the process.

**Note 3**— The Nazir should personally scrutinise all cases in which the peon reports that he could not find the person on whom or the house or property where the service was to be made, and he should bring all cases in which the peon appears to be at fault to the notice of the Judge-in-charge.

(2) If it appears to the Court that sufficient information is not given as to the identity and place of residence of the person on whom, or the house or property where a process is to be served, or if the Court is satisfied from the declaration of the serving officer or upon his examination on oath that the person to be served or the house or property could not be identified after due diligence and enquiry, it may ask the party concerned to supply an identifier.

#### **Case Law**

The guidelines for services of processes and work in the nazarat are provided under this chapter. Regarding the method and proof of service of processes several directions are contained in Rule 63 and thereafter. In **Sushil Kr. Saha -Vs- Joram Chandra Saha**, (1993) 1 GHC 161 : 1992 (2) GLJ 385 : (1992) 2 GLR 455, for violation of direction in Rule 64(1) ex parte decree was set-aside and the case sent back for disposal in presence of the defendant.

**65.** If the person addressed is absent from his residence at the time of attempted service and there is no likelihood of his returning

there within a reasonable time and there is no agent empowered to accept service on his behalf, nor any other person on whom service can be made, service shall be effected in the manner directed in Order 5, Rule 17. The report of the serving officer should state the grounds of his belief that the person was absent from his residence at the time of attempted service and that there was no likelihood of his returning within a reasonable time and that there was no agent empowered to accept service nor any other person on whom service could be made; and in any case that on the door of the outer house or some other conspicuous part of which a copy of the process was affixed, was the ordinary residence or place of business of the person address at the time when it was so affixed.

**66.** If the service is made under Order 5, Rule 15, the report of the serving officer should clearly state, with grounds of his belief that the person was absent from his residence at the time of attempted service and there was no likelihood of his returning within a reasonable time, and that he had no agent empowered to accept the service, and that the person, to whom the process was delivered was an adult male member of his family, and was actually residing with him at the time of such service.

**67.** If the service is made under Order 5, Rule 14, the report of the serving officer should clearly state, with grounds of his belief that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service, and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immovable property forming the subject matter of the suit.

**68.** If the return of service is under Order 5, Rule 20, the report of the serving officer should clearly state, with grounds of his belief that the house upon the door or other conspicuous part of which a copy of the process was affixed, was the house in which the defendant or respondent is known to have last resided, or carried on business or personally worked for gain, or that the service was made in all respects in conformity with the order for substituted service, which should accompany the process. The report of the service officer should also clearly state, with grounds of his belief how long, and until what time the defendant or respondent resided in the house, and what has become of him.

**Note**— In the case of service under Order 5, Rules, 14, 15 and 17, the report of the serving officer should clearly state, with grounds of his belief that proper and reasonable efforts were made to find out the person to be served. For instance, the serving officer should go to the place or places and at the times at which it was reasonable to expect the person would be found, and mere temporary absence of the person does not justify the serving officer in affixing a copy of the summons on the door of the person's house. The process should again be taken to his house to be served upon him when the inquiries made, show that he is likely to be at home and to be found there.

**69.** If the person addressed has no place of residence and he cannot be found or if he dead these facts shall be stated in the report together with the names and addresses of atleast two persons from whom the facts are ascertained. If the person addressed has ceased to live at the place, his present address, if available, and the source of information should be reported.

**70.** If the service is made under Order 5, Rule 12 on an agent, the report should state with grounds that such agent was empowered to accept service, under Order 3, Rules 2, 5, 6; Order 27, Rule 2, or Section 85(1), Civil Procedure Code, or by virtue of appointment for that purpose in writing.

**71.** If the service is made under Order 29, Rule 2, the report should clearly state that the summons or notice was left at the registered office of the Company or, if there is no such office, at the place where the Company carries on business, or that it was delivered to any Director, Secretary, or other principal officer.

**72.** (1) In the case of Railway Administration or Companies in addition to service in the usual way, a copy of the summons should be sent by post under Order 29, Rule 2(b), provided that : if the summons is sent by registered post, service in the usual way may be dispensed with.

(2) All General Managers, Deputy General Managers of the India Government Railways having been authorised to act *ex-officio* for and on behalf of the Central Government in respect of all judicial proceedings in which the respective India Government Railway may be concerned, are recognised agent of the Government within the meaning of Rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908. Summons, etc., should, therefore, be sent direct to the officers concerned, for service under Rule 3, Order III of the Code instead of to the Secretary to the Government of India.

**73.** If the service is made under Order 30, Rule 3(b), the report of the serving officer should state with grounds of his belief that the person on whom the summons was served had at the time of service the control or management of the partnership business.

**74.** (1) If the process is addressed to more than one person the report shall described the manner of service on each person.

(2) Process-serving peons must invariably note the date, hour and exact place of service of each individual process and also the sequence in which processes are served on different persons to be served in the same case and on the same occasion, in their reports and declarations.

(3) Every peon must immediately after completion of any duty connected with a process write clearly with his own hand at the place of service and in the presence of witnesses (if any), his report of service or failure of service.

(4) Every report of service or non-service shall comply strictly the directions in these rules and in Form No. (P)1-A, Volume II, and the declaration in proof of service shall be recorded in legible writing in the manner laid down in Form No.11, Appendix-B; Schedule I, Civil Procedure Code, as amended by the High Court.

**Note**— Instructions for the guidance of process-serving peons and returning officers—

- (a) If the process-serving peon is personally acquainted with the person to be served, the fact should be stated. If he is not so acquainted, it should be stated how he satisfied himself about the identity of person;
- (b) It should be seen that the name of the person who accepts service corresponds exactly with the name given in the process. Where the signature in token of acceptance differs from the name given in the process, the discrepancy should be explained;
- (c) Where the process is served on some person other than the persons named therein who accepts the process on his behalf, it should be stated whether such person is an adult, and whether he is living with and is undivided from the person on whose behalf he accepts service;
- (d) Where service is accepted by an agent, it should be stated whether such person is duly authorised to accept service;
- (e) Where a person refuses to accept the process, the grounds thereof, if any, and the names of the persons witnessing the refusal should be given;
- (f) Where a process is affixed owing to the absence of the individual named therein, it should be stated, if possible, both when he left home and when he is likely to return. The attempts made to find out the person to be served should also be stated (see Note under Rule 68);

- (g) When personal service is not possible on pardanashin women, an attempt should be made to serve some responsible male member of the family.

**75.** When the summons or notice which has been served is the summons or notice of another Court transmitted to the serving Court for the purpose of service only, then, upon service being effected, this latter Court should retransmit the summons or notice to the Court by which it was issued, together with (1) the Nazir's return, (2) the declaration or deposition of the serving officer and the affidavit or solemn declaration or deposition of the witnesses (if any), relative to the facts of service, (3) the record of such Court's proceedings with regard thereto (Order 5, Rule 23), and (4) in a case where any of those documents is in a language different from that of the district from which the process issues, and English translation of such document.

**D. Additional Rules relating to the service of Notices, etc., issued by the High Court**

**76.** On receipt of the proceedings of the High Court, transmitting the notices of appeal, application, etc., 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 applicant or some one 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 process.

**77.** The date fixed for the hearing of the case and the time allowed for service and return of the process to the High Court shall be specified in the notice.

**78.** The lower courts shall issue all notices, etc., 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.

**79.** It shall be 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 the declaration of the serving officer specifying the fact and mode of service or the reason for non-service.

**80.** 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 Assistant Registrar-in-charge, 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, than 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 served 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 and shall be guided by Rules 76, 78 and 79.

**E. Service on persons in Civil and Military Employ**

**81.** Where service is made in accordance with the provisions of Order 5, Rule 27; Order 5, Rule 28 of Civil Procedure Code, a reasonable time should be allowed for the making of arrangements for the relief of the persons summoned and to enable them to appear themselves or to appoint a representative or make such other arrangement as may be necessary.

**F. Service of processes in and from Kashmir and Manipur**

**82.** Summonses and other processes issued by any Civil Court in Kashmir and Manipur for service in Assam may be sent to the appropriate Civil Court of Assam and served as if they were processes issued by such Court.

**83.** Summonses and other processes issued by any Civil Court in Assam for service in Kashmir and Manipur shall be sent to the appropriate Court in these States.

**2. Arrangement and Distribution of work in the Nazarat**

**84.** It shall be the duty of the Nazir—

- (i) to explain to the process servers the directions in these

and other rules in vernacular and to point out the manner in which various kinds of processes are to be served and returns are to be verified;

- (ii) to see that processes are promptly sent out for service and fairly distributed amongst the process servers, and that a fair average of work is attained by each process server;
- (iii) to see that as far as possible on an average not less than 20 days in a month are spent by each peon in the mufassil in the service of processes;
- (iv) carefully to scrutinize the diary of the peon and every return submitted by him each time he returns from a journey after service of process, or the reasons given for failure of service and to report to the Judge in-charge of the Nazarat all cases of unreasonable delay in service, misconduct, neglect or improper discharge of duty for such disciplinary action as the Judge in-charge may think fit and proper.

**Note-** Some of the common faults that require close scrutiny are—

- (a) Delay in service of processes so as not to allow sufficient time to the person served to appear prepared on the date fixed;
- (b) Delay in service necessitating an adjournment in order that the fixed number of days may intervene between service of summons or notice and hearing;
- (c) Delay in submission of Diary;
- (d) Return of processes unserved on the plea of want of time;
- (e) Return of processes unserved on the plea that no identifier could be had or that the person to be served could not be found;
- (f) Writing of service report after return from journey and not at the scene of service;
- (g) Small percentage of personal service;
- (h) False or collusive report.

**85.** All *Nazirs* will be held responsible to the presiding Judge of each Court at every station for the due and regular service of all processes entrusted to them for service by themselves and their subordinates.

**Note 1-** Service or execution of processes by *Nazir* can only be allowed under special circumstances when the court is satisfied by affidavit or otherwise that there has been previous resistance and that execution will not be effected by ordinary peons without danger to the public peace. Deposit of pay of the officer is not required in such cases.

**Note 2-** Processes (other than those referred to in Rule 60 *ante*) received for service from places out-side the jurisdiction of the Nazarat concerned should be entered in the process register in red ink and it shall be particularly seen that such processes are promptly served and returned to the issuing courts in sufficient time before the hearing dates.

**Note 3-** The calculation of the percentage of personal service of processes should be based on the number of processes actually served, as this method is obviously a better criterion of a process-server's success than a calculation based on the number of processes to be served.

**86.** Every *Nazir* shall maintain for the jurisdiction for which he is the proper officer for service of processes—

- (i) a list of all places within a five-mile radius of his office;
- (ii) a list of all places outside such five-mile radius.

**Note-** A map showing the villages and thanas in the area under the jurisdiction of the courts and their distances from each other and from the headquarters should be hang in every Nazarat.

**87.** Processes for service at places within the five-mile radius shall ordinarily be sent out every working day (whenever necessary), and should ordinarily be returned on the next day and not later than the day following.

**Note-** The District Judge may, in his discretion, suspend the operation of this rule in respect of service of processes in villages which lie within the five-mile radius but out-side the town area, as and when necessary.

**88.** The *Nazir* shall divide the area outside the five-mile radius into convenient beats or circles where processes should be sent at regular intervals and shall make the best possible arrangements for the prompt service of processes of each beat. The boundaries of the circles and the fixation of the intervals may be varied from time to time as experience dictates. He should also prepare a statement showing on what days process serving peons are sent out for service in any particular beat and how long the process-serving peon is supposed to be away on that particular beat.

**Note 1-** The statement should be in the following form—

#### Illustration

Beat No. 9—Processes issue every Tuesday. Process-serving peon returns after 8 days.

**Note 2-** The distribution of processes on the beat system, will, of course, have to be departed from in cases of urgent processes or in cases where there is an accumulation of processes for a particular beat.

**89.** Returnable dates should not be fixed at random, but sufficient time should be allowed so that the processes for one trip



may all be served and returned a reasonable time before the dates fixed in the cases concerned. In fixing dates, the distance to be travelled, the season of the year, the conditions of the locality, the number of processes made over at a time *etc.*, should be taken into consideration.

**Note-** When a peon entrusted with the service of several processes finds that there is no reasonable chance of his being able to serve all the processes in the same trip and to return them in sufficient time before the due dates, he should at once send back by post the processes that cannot be served, so that the *Nazir* may give out such processes to other peons for service if there is sufficient time before the hearing dates. Or when a peon finds that he cannot return to headquarters before the returnable dates because he has to serve other processes, he should return the processes that he has already served by post before the returnable date so that the work of the Courts concerned may not suffer.

**90.** To equalise the work of process-serving peons a certain amount of short beat work as well as a certain amount of long beat work should be given to each peon and there should also be, as far as possible, equality in the number and kind of processes distributed. The Judge in-charge of *Nazarat* should as often as time permits and at least once a month have the processes distributed under his personal supervision.

**Note-** It shall be particularly seen that all peons to whom processes have been distributed for service leave their headquarters immediately on receipt of processes.

**91.** (1) Processes received in the offices must be made over to the *Nazir* if possible, on the same day on which they are filed and not later than two days after their receipt.

(2) Processes under Order 16, Rule 7-A, for service by the parties must be returned to them or their pleaders after scrutiny and entry of expenses fixed by the Court (under Order 16, Rule 2), for payment to the witness, date, *etc.*, signature within three days of their filing. All such processes should be entered in the Register.

**Note-** In order that there may be no delay parties or their pleaders should in their turn also apply for and obtain the processes within the prescribed time. The signature with date of the party pleader taking delivery of the processes applied for should be taken on the application.

**92.** Processes are ordinarily to be issued to peon in the order in which they come back from the mufassil. Latter processes for a particular beat are not to be issued to the exclusion of processes for that beat filed earlier. The latter are only excluded, if necessary, by processes marked "Urgent" by the Court.

**93.** It shall not ordinarily be lawful for the *Nazir* to keep back processes for any period longer than may be necessary to admit of a sufficient number accumulating for a particular beat. Subject to this, the *Nazir* shall arrange for the distribution of processes outside the five-mile radius as often as possible in every week or at such other regular intervals as may be necessary, according to the direction of the Judge in-charge of *Nazarat*.

**94.** As far as possible, all processes other than warrants of arrest for persons residing in the same beat, shall be served by one process-serving peon and not by several, whether issued by the same or by different Courts, provided that their number is not unusually large. No process-serving peon should ordinarily be given processes for service in a locality where his home is situate or his relations reside.

**95.** The above rule does not apply to processes marked "Urgent". The Presiding Judge of any Court may, for any sufficient reason at any hour of the day transmit a process for emergent execution to the *Nazir* and it shall be his duty on receiving such process to make immediate arrangements accordingly.

**Note-** For extra fee for urgent processes, See Note 3 to Rule 549. The offer to pay extra fee shall not of itself be a sufficient ground for granting as "Urgent" process unless the court is of opinion that there is any real cause for urgency.

**96.** (1) The Judge in-charge of the *Nazarat* shall send to every Court at the station a copy of the list of beats or circles showing the names of villages in each beat, on what days peons are sent out for service in each particular beat or circle and how long they are supposed to be away on that beat (*vide*, Rule 88), so that processes for service within a particular beat may be sent to the *Nazarat* in proper time.

(2) The beats shall be fairly distributed between the peons on the establishment and to each peon shall be allotted a number of beats according to the distance, situation and accessibility of the villages comprising each beat. The equalise the work of peons, fresh distribution of beats among them should be made at such intervals as the Judge in-charge may direct.

**97.** Processes made over to the *Nazir* for service must be returned by him to the issuing Court as soon as possible after they are received back from the peons so as to reach such Court

for scrutiny in sufficient time and at least two clear days before the date fixed for hearing of the case or matter.

**Note**— When processes are returned unserved a considerable time before the date fixed for hearing, it shall be the duty of the *Nazir* to give out the process for reservice if there is sufficient time before the hearing.

**98.** The following processes may be executed by special peons—

- (i) warrant for arrest of a person;
- (ii) warrant for attachment of moveables;
- (iii) any other process ordered by the Court either *suo motu* or otherwise to be so executed.

**Note**— More than one peon may be deputed for the execution of any process where there is such a direction of the Court to that effect.

**99.** When not employed in serving processes, process-serving peons should be employed in miscellaneous work in the Courts and offices.

**Note 1**— No process-serving peon shall be employed in doing clerical work for the office.

**Note 2**— Process-serving peons when on duty in Court and out on process-serving work, must always wear and display their standard badges.

**Note 3**— Process-serving peons must report themselves to the *Nazir* and make over to him the diary and all processes with which they were entrusted for service immediately on return to headquarters from a journey. The *Nazir* must see that this rule is strictly obeyed by each peon and report cases of non-compliance to the Judge in-charge.

**Note 4**— (a) During the interval between return to headquarters and departure for service of processes, peons must attend office punctually at the hour as prescribed.

(b) When signing the Attendance Register every day, the Judge in-charge should from time to time ascertain whether all peons at headquarters have actually come to Court and taken up the duties assigned to them and also inspect the process-registers and diaries in order to see whether the peons who were to have returned from mufassil have come back within the due date.

**100.** (1) So far as budget allotments permit the *Nazir* at district headquarters shall be deputed once a month for at least three days in the interior to verify either before or after the disposal of cases a certain proportion of the returns of processes issued by the Civil Courts in the district to be fixed by the District Judge. The selection of processes should be made after calling for a report from the Courts of processes which are regarded as suspicious. He shall go to a different locality on each occasion and also invariably

verify processes when he goes to the mufassil on business for other purposes.

(2) During the *Nazir*'s absence of such duty, the senior Assistant *Nazir* or an assistant shall be appointed as cashier on the conditions laid down in Note to Rule 715, but no application will be entertained for increase of staff on this account.

## CHAPTER 4

### SERVICE OF PROCESSES IN PLACES OUT-SIDE INDIA

**101.** Certain Courts in the following foreign countries having been notified under clause (b) of Rule 26 of Order V, summonses may be sent to such Courts for service—

I. *Iraq*— Indian Courts are free to send processes for service to the Iraqi Ministry of Justice direct. Such documents should be accompanied by an English translation and a covering letter. If for any particular reason, which should be stated in each case, it is considered necessary to send the documents to the Iraqi authorities through the diplomatic channel they should be sent to the High Court for transmission through the proper channel.

II. *Kenya*— The Civil Courts (4th June 1934, late Home Department notification No. F-811-23-Judl.).

III. *Iran*— The Civil Courts (3rd May 1928, late Home Department notification No. F-840-25 Judl.). Documents intended for execution in Iran should not however be sent to such Courts direct. They should be sent to the High Court for transmission through the diplomatic channel.

IV. *Sweden*— The Civil Courts (20th June, 1936 notification No. F-12-17-35 Judl.). No Charge will be made for the service of processes of Swedish Courts in India.

V. *Nepal*— The Nepalese Courts specified in the Appendix to this part (15th August, 1925, late Home Department notification No. F.576/24 Judl.).

**Note 1**— Reciprocal arrangements have been made between India and Japan and also between India and Sikkim for the service of legal processes (*vide* notification No. 687/P.S., dated 15th January, 1958).

**Note 2**— The time limited for appearance or returnable date should be such as to enable processes to be served and the person served to do what is required of him. All Courts, when issuing processes for service in Nepal, should so fix the

date for the appearance of parties, and witnesses in consultation with Nepales Hakims of the Amini-Courts that witnesses may not have to return without having their statements recorded on the date fixed.

**102.** (1) When a defendant not being a public officer, resides in Pakistan, the summons may be sent for service on him under the first proviso to Rule 25 of Order 5 of the First Schedule to the Code of Civil Procedure, to any Court in that country (not being the High Court), having jurisdiction in the place where the defendant resides.

(2) When the defendant is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces), the summons may be sent for service on him to the following officers, namely—

- (a) where the defendant is a public officer serving in connection with the affairs of the Dominion of Pakistan or is a servant of a Railway in Pakistan, to the Secretary to the Government of Pakistan in the Ministry of the Interior;
- (b) where such defendant is serving in connection with the affairs of any other Government in Pakistan or under any local authority in Pakistan to the Home Secretary to that Government or, as the case may be, to the Home Secretary to the Government within whose territory the local authority has its jurisdiction.

(Ministry of Law Notification No. F-22-1/51-, dated the 1st September, 1951).

**103.** Summonses sent by any Civil Court in Pakistan to any Civil Court within the jurisdiction of the ["Gauhati High Court"]<sup>1</sup> for service upon a defendant residing within such jurisdiction, shall be served by such Civil Court and the return of service shall be sent direct to the issuing Court in Pakistan.

**104.** Summonses and other processes issued by any Civil Court in Pakistan for service on any person residing within the jurisdiction of the ["Gauhati High Court"]<sup>1</sup> and sent to any Civil Court having jurisdiction in the place where the person resides, shall be served by such Civil Court and the return of service shall be sent direct to the issuing Court in Pakistan.

1. Substituted for the words "High Court of Assam at Gauhati" and "High Court at Gauhati" Vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette PART IIB, dated July 17, 2002 (w.e.f. 14-6-2002)pp-309-321.]

**105.** Summonses and other processes issued by any Civil Court within the jurisdiction of the ["Gauhati High Court"] for service on any person in Pakistan, may be sent direct to the Civil Court in that country having jurisdiction in the place where the person resides.

## CHAPTER 5

### PRODUCTION OF PUBLIC DOCUMENTS AND RECORDS

<sup>1</sup>[**106.** (1) Subject to any provision of the law to the contrary, the original of public and municipal records should not be called for when duly authenticated and certified copies of the same are admissible in evidence and will serve the purpose for which the records are required. When public documents as defined in Section 74 of the Indian Evidence Act, 1872, or documents forming part of public documents or in public custody are called for, the Court calling for them shall state the circumstances which render the production of the documents necessary. When, however, the Collector or other public officer-in-charge of the documents, has been summoned under Or. 16., Rules 1 and 6 of the C.P.C. to produce in Court a certain document, it will be his duty to send it to the Court, but such officer may at the same time, in person or by letter addressed to the Court object to the production of the document under Section 123 or Section 124 of the Indian Evidence Act (1 of 1872), stating the grounds of such objection. On an objection being made, it shall be the duty of the Court to consider and decide according to law if it should compel the production of such document.

["(2) In exercising the discretion under Order 13 Rule 10(1) the Court shall scrutinize the affidavit supporting the application to ascertain that the requirements of Rule 10(1) of Order 13 have been fulfilled. Wherever possible the application shall be accompanied by authenticated copy of the document in original of which is sought to be called for.

["(3) When a copy as aforesaid is produced the Court shall at the hearing inquire whether the opposite party admits the copy. If the copy is admitted the original need not be called for.

1. Rule 106, re-numbered as Rule 106(1) and Added new sub-rule 106(2), (3) and (4), Vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette PART IIB, dated July 17, 2002 (w.e.f. 14-6-2002).]

(4) In passing the order under Order 13 Rule 10, calling for a document from any other record the Court shall also bear in mind the provisions of Order 7 Rule 14 and Order 8 Rule 1, requiring a list of documents to be presented along with the pleading and see whether the document sought to be called for is listed in the list of documents so to be furnished.]

**107.** (1) When the Collector or other public officer-in-charge of documents has been summoned under Order 16, Rules 1 and 6, to produce in Court a certain document or record from any Court or office under Order 13, Rule 10, it shall ordinarily be sent by registered post. If, however, owing to excessive weight or any other special reason, the documents or records cannot be sent by registered post, they should be sent by rail.

(2) Whenever any documents in the custody of the Parliament or any State Legislature or any Committees thereof 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 document required 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 Parliament or the State Legislature should produce it before the court. On such an application being filed by the party concerned the Court after due scrutiny of the same shall proceed to move the presiding officer of the Parliament of the State Legislature as the case may be, with a letter of request in Form No. (M)10(b) for production of the document in question.

(3) It is not intended to prohibit the practice of sending records by a special messenger when such a course is considered advisable, *e.g.*, when the document to be sent is a State document of importance, *etc.*, *etc.*

**108.** When any public document (not being the record of a suit or of a judicial proceeding), or document in public custody, has been produced in Court in compliance with a summons, and the officer from whose custody it has been produced, desires its prompt return, the Court shall, after the document has been inspected or put in evidence, as the case may be, cause it to be returned with the least practicable delay to such officer, after the preparation of such copy as the Court may require under Order 13, Rule 5(2),

unless its detention is considered to be necessary till the delivery of the judgment. The expense of preparing such copy shall be borne by the party adducing the particular document as evidence.

**Note**— As to documents called for from private persons, see Rule 391.

**109.** When a record is called for, except by superior judicial authority or by a Civil Court acting under Order 13, Rule 10, the Court or officer calling for it shall state the circumstances which render its production necessary. The Judge may decline to forward it, if in his opinion no sufficient grounds are shown. It is improper and inconvenient that records of Courts of Justice should be sent to other public officers of functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers.

**Note 1**— For form of letter calling for records under Order 13, Rule 10, see Form No. (M)9(a), Volume II.

**Note 2**— In all cases when an original record is called for from the High Court, the Court calling for the record should state clearly the reasons which make its production necessary, and forward with the requisition a certified copy of any document forming part of Part I of the High Court record specified in Rules 7 and 9 Chapter XV of the Rules of the High Court, 1955 except with regard to the following documents, in which instance, certified copies may be dispensed with—

- (i) Applications for substitution, addition or removal of parties and the affidavits filed therewith;
- (ii) Applications for the return of documents when they have been rejected or on which special orders have been passed, in civil or criminal cases; and
- (iii) Memorandum of appeal and the memorandum of cross-objections in civil cases and the memorandum of appeal (or petition or revision, or letter of reference) in criminal cases, when these have been printed in the paper book of the case.

In regard to papers forming Part II of the High Court record, no certified copy need be sent unless otherwise instructed.

**Note 3**— When a record or document is requisitioned from the High Court, on the Application of a party under Order 13, Rule 10 a searching fee of rupee one shall be, realised in court fee stamps in addition to the fee prescribed under Article 1-A, Schedule II, Court-fees Act.

**110.** Requisitions made under the provisions of Order 13, Rule 10, by sub-ordinate Courts for the production of records of cases pertaining to, and in the custody of High Courts other than ["Gauhati High Court"]<sup>1</sup> or Courts Subordinate to such other High

1. Substituted for the words "High Court of Assam at Gauhati" and "High Court at Gauhati" Vide C.S. No. 22.

Courts, should be transmitted through the ["Gauhati High Court"]<sup>1</sup> and should be accompanied by a copy of the affidavit referred to in the rule above quoted, together with a duly certified translation into English if such affidavit be in the vernacular.

**Note 1**— Requisitions for records of the Courts subordinate to the ["Gauhati High Court"]<sup>1</sup> made by any other High Court under the provisions of Order 13, Rule 10, or by Court subordinate thereto should not be complied with, unless they are received through the ["Gauhati High Court"]<sup>1</sup>.

**111.** When in the course of proceedings in a Criminal Court, it becomes necessary to refer to the contents of records deposited in any Civil Courts the ordinary procedure is to require copies of the necessary papers to be filed. When, however, the production of an original record becomes necessary, the Judge or the Magistrate shall make a requisition stating therein the reasons for the production of the original. The Court where the record is deposited shall comply with the requisition even though it is of opinion that the reasons given for the production of the original are insufficient. In that case a report shall be submitted for the consideration of the High Court.

**112.** The attention of all Courts is drawn to the following Government Resolution No.1538, dated the 13th May, 1891, regarding the production of Post Office records, issued by the Director General of Post Offices—

A summons from a Court of Civil or Criminal Jurisdiction to produce any of the records of a Post Office, or a certified extract from or copy of any of such records, must be complied with. The receipt of such a summons and such particulars as are known to the postmaster regarding the case, should be at once reported to the Postmaster General, in case he should see fit to raise any objection in Court under Section 123 or Section 124 of the Indian Evidence Act (*I of 1872*), to the production of any of the records. When any journal or other record of a Post Office is produced in court and admitted in evidence, the officer producing it should ask the Court to direct that only such portions of the records as may be required by the Court shall be disclosed.

1. Substituted for the words "High Court of Assam at Gauhati" and "High Court at Gauhati" *Vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002.]

## CHAPTER 6

### GUARDIANS AD LITEM OF MINOR DEFENDANTS AND RESPONDENTS

#### A— In Original Suits

**113.** (1) Where there are both major and minor defendants and there is no appearance, the guardian, with a view to obtain instruction in the case, should communicate with the natural guardian of the minor and ordinarily with the major defendants by registered post-card in which the subject matter of the suit should be briefly stated.

**Note 1**— If a pleader is appointed in a case where there are both adult and minor defendants having the same interest, the pleader who represent the former should ordinarily be appointed guardian *ad litem* of the latter.

**Note 2**— When the plaintiff is allowed to sue in forma pauperis the Guardian *ad litem* of minor defendants (where necessary) should be an officer of the Court.

**Note 3**— Where the number of Major defendants is numerous, the guardian should seek the Court's instruction as to how many and which of them he should communicate with.

(2) Where the sole defendant is a minor, the aforesaid communication should be addressed to his natural guardian, and in any case where the interests of the minor require, may be addressed to persons other than those who are actually parties to the suit.

(3) If no response is received to the communication mentioned in sub-rules (1) and (2) or if the response is not helpful and the guardian is unable to have a personal interview with the defendants or their agents, he should report the fact to the Court in writing, with a statement of the circumstances, and apply for leave to go to the locality for necessary enquiry.

(4) The guardian's report on such local enquiry, if permitted, should contain the following particulars—

- (a) Date and hour of departure for the locality;
- (b) Mode of journey, *viz.*, whether by rail or steamer or boat or road;
- (c) Date and hour of reaching the locality;
- (d) The names of persons who identify the minor;
- (e) Age of the minor as stated by the minor's people and as estimated by the guardian;
- (f) The names and residence of persons in whose presence the enquiry is held;

- (g) Whether the minor has any defence;
- (h) If there is defence what is the nature of it and what benefit is expected to accrue to the minor out of the defence;
- (i) Whether the minor or his people are able and prepared to meet the costs of the defence, and if not, what is the probable amount of such costs;
- (j) If no defence is filed the reasons thereof together with the statements of the persons on whose report the decision is arrived at.

(5) In case the court refuse to grant leave for local enquiry, the guardian will proceed according to the instructions of the court given in each case.

(6) Where in response to the communication mentioned in sub-rule (2) or otherwise the minor or his natural guardian, or any other persons on his behalf come and see the guardian, his subsequent proceedings and report should conform as far as applicable to sub-rules (4)(g) to (j).

(7) The guardian's report mentioned in sub-rules (4) and (6) may contain such other facts as he may think necessary to bring to the notice of the Court.

(8) Where no response is received to the communication mentioned in sub-rules (1) and (2) and no local enquiry is also ordered by the Court, it shall be the duty of the guardian on a careful scrutiny of the plaint and examination of the record of the suit, if necessary, to find out if there are any *prima facie* defects or legal defences therein as may inure to the benefit of the minor and to bring the same to the notice of the Court in his report. He should in all cases certify in his report that he has taken all possible care in this respect and if he does not find any material for contest shall state that he sees no ground for contest.

### B- In Appeals

["(9) The guardian-ad-litem shall submit his report within 30 days of his appointment with the leave of the court he may be granted a further 7 to 14 days time in total to file the report."]¹

1. Substituted sub-rule (9) of Rule 13, *Vide* C.S. No. 22.

**Note-** Before substituted of sub-rule (9) of Rule 113, read as follows-

"(9) The foregoing rules will apply *mutatis mutandis* to the guardians of minor respondents, subject to the following rules."

(10) If no response is made to the registered post-card mentioned in sub-rule (1), the guardian should, before applying for leave to go to the locality, similarly communicate with the pleader who conducted the case in the lower Court on behalf of the minor or his predecessor-in-interest and ascertained from him, if possible, the probable cause of the non-appearance of the minor, reporting the result to the Court.

(11) If the step taken under the last preceding sub-rule does not elicit any satisfactory result, the guardian should consult the record and submit a report to the court in which he should state whether in his opinion the judgement and decree of the lower Court can be supported and if such opinion is in the affirmative, why he should not argue the case himself before the Court. A written note on the merits of the case should accompany the report and he should in all cases follow the instructions in sub-rule (8) and append the certificate referred to therein.

(12) An amount estimated to cover the actual travelling and halting expenses of the guardian, not exceeding the scale laid down by Rule 113-A will be required by the Court to be deposited by the party at whose instance the guardian is appointed before an order is passed for a local enquiry mentioned in sub-rule (3). The amount so deposited or so much of it as may be found due will be paid out to the guardian when he has submitted his report mentioned in sub-rule (4).

(13) The fee prescribed by the High Court and the actual postal charges for communication mentioned in sub-rule (1), (2) and (10) will be deposited into court before appointment of guardian *ad litem* and paid to the guardian on submission of his report.

**Note-** As to fees for guardians *ad litem*, see Rule 582.

**113-A.** The rate of travelling allowance to be allowed to the guardian, both in the case of an original suit and of an appeal, shall be his actual fare each way according to the class by which persons of his rank and station in life would ordinarily travel with a daily fee not exceeding Rs. 4 for the days he may be away from the headquarters excepting the days on which the guardian is actually travelling.

**Note-** Where the journey is by any kind of conveyance by road or water regard should be had to the scale laid down in Rule 569 (3) (b).

## CHAPTER 7

## FIXING OF DATE AND ADJOURNMENTS

**114.** When witnesses are in attendance for any party, the fact should be noted in the order-sheet. In every case adjourned for hearing or for further hearing, a specific order should be recorded directing the witnesses who have attended but who have not been examined, to attend on the adjourned date.

**115.** (1) ["Presiding Judge"]<sup>1</sup> should personally attend to the fixing of peremptory dates for hearing, especially in contested cases, regard being had to the following principles—

- (a) The number of cases fixed for each day for peremptory hearing and other purposes should be restricted to such a number as, after making allowance for unavoidable postponements, the Court may reasonably expect to be in a position to deal with;

**Note—** District Judge should refer to Section B of the monthly statement in Form No. (S)1 to have an idea as to how far rule is being observed.

- (b) Dates of cases should not be fixed without some certainty that they will actually be heard on the date so fixed;
- (c) As far as practicable, all cases should be brought to trial in order of their age no matter what may be their comparative length or complexity.

**Note—** In the case of simple money, rent and ejectments, suits u/s 9, Specific Relief Act and other suits of an urgent nature, the speedy disposal of which is required for the convenience of litigants, the rule as to the hearing of cases in chronological order may be relaxed.

(2) On the date finally fixed for hearing of a suit, the trial shall begin and the evidence of witnesses shall be recorded from day to day until the trial is completed, unless an adjournment is considered necessary, in which case the reasons for it shall be recorded; provided that this rule does not prohibit the taking up of other cases for passing such routine orders as will occupy a short time only or the disposal of cases which are expected to take only a short time or the taking up of miscellaneous and small cause court cases on the days regularly set apart for them.

1. Substituted for the words "President Judges" vide C.S. No. 3, Notification No. HC. XI-1/69/8351/RC, dated 5th September, 1973.

["(3) Before the trial of ready cases begin on a particular day the court may pass routine orders in other cases which take only a short time in the first hour of sitting between 10.30 A.M. to 11.30 A.M."]<sup>1</sup>

**Note 1—** Devoting a small portion of each day to the hearing of a case is not hearing it from day to day.

**Note 2—** Trial includes the hearing of arguments.

**116.** (1) A party who desires an adjournment may give notice in writing to the other party, or his pleader, of his intention to apply therefor in sufficient time before the date fixed for hearing.

(2) A party who desires that the hearing may be advanced may apply therefor by interlocutory application, of which timely notice shall be given to the other party or his pleader.

(3) The party served may give to the other party or his pleader notice in writing that he consents to or will oppose such adjournment or advancement.

(4) On the day appointed for hearing of such application the Court will pass necessary orders granting or refusing the adjournment or advancement.

["(5) In all cases of adjournment be it on advance notice as prescribed in the foregoing sub-rule or on the day of hearing of a suit or a case the opposite party should be adequately compensated for the entire expenses incurred on the day of adjournment. To enable the court to determine the appropriate compensation by way of costs the parties may annex their own estimate of expenses incurred to the application and to the objection if any. Costs so determined shall be a condition precedent as mandated under Section 35-B of the Code of Civil Procedure.

(6) Every application for adjournment shall either be verified or supported by an affidavit as required under Rule 16 *ante*. Wherever possible the application shall in addition be supported by documentary proof of the averments made therein.

(7) Every application for adjournment shall be disposed of by a speaking order and the court in passing the order shall bear in mind the mandate of the proviso to Order 17 Rule 1."<sup>2</sup>

1. Added new sub-rule (3) in Rule 115, vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002), pp-309-321.]

2. Added new sub-rule (5), (6) and (7) in Rule 116 by *Ibid*.



117. (1) Costs of adjournment, costs when parties are put on terms and compensatory costs, etc., order to be paid by a party must not be diverted to any purpose other than that for which they are intended, that is, of recouping the other party for the loss or injury which an adjournment or any other order may involve.

(2) Where adjournment or other costs have been paid into Court, the fact of such payment should be noted on the order-sheet by the Bench Assistant. All such costs ["accidentally"]<sup>1</sup> remaining unpaid shall be entered in the decree as costs in favour of the party entitled to them and set off against the amount, if any, payable by him to the other party under the decree [Order 20, Rule 6(3)].

(3) Where adjournment costs, compensatory costs or any other costs are ordered to be paid as condition precedent to the next or further hearing, or the revival of a case, or the participation of party in the proceedings, etc. ["Payment to the party is the rule, but payment of the same in an exceptional case"]<sup>2</sup> to the advocate or pleader of the party in whose favour such order is made, will be a sufficient compliance with the order, but it shall be the duty of the advocate or pleader to the file in Court as early as possible and not later than two weeks, a proper receipt showing that the money received by him has been paid by him to his client or clients and the Court should in all cases insist on the filing of such receipt.

**Note 1-** The rule as to filing receipt applies also to all such costs deposited into Court in favour of a party and withdrawn by his advocate or pleader.

**Note 2-** In the case of illiterate clients, the receipt shall be endorsed with thier thumb impression.

(4) An advocate or a pleader failing to file the receipt required by this rule shall deposit into Court the costs received or withdrawn by him.

(5) Whenever a person to whom costs of any kind are ordered to be paid as condition precedent, or his agent, or a representative who in the opinion of the Court is competent to receive payment, is present in Court, the money may conveniently be passed direct to the person so entitled or the said agent or representative in open Court and an acknowledgment of receipt obtained forthwith

1. Inserted the word "accidentally" vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002) pp-309-321.]

2. Substituted for the word "payment of the same" by *Ibid*.

from the person on the order-sheet, the fact being noted by the Presiding Judge in the record of the case.

**Note-** Such costs when paid into Court must be treated as peremptory receipts (Rule 614) and disposed of in the manner prescribed there.

## CHAPTER 8

### PREPARATION FOR TRIAL, FRAMING OF ISSUES AND RECORDING OF EVIDENCE

#### 1. Use of Rules relating to Discovery, Inspection, Admission, etc.

["118. (1) On presentation of the written statement the next date in the suit shall be fixed for filing of documents and for steps for discovery and Admission, if any in accordance with the provisions of Order 11 and 12 of the Code of Civil Procedure. The next date in the suit shall be for first hearing of the suit in accordance with the provision of Order 10 of the Code and for framing of issues.

(2) On the day fixed for first hearing and framing of issues the court shall peruse the pleadings carefully and ascertain from the parties or pleaders admissions and denials if any that may arise from the nature of the particular pleading and record them. To clear up the pleadings further the court may also examine the parties orally. The presiding officers shall himself record the issues in accordance with the provisions of Order 14 Rule 1(5) and all the materials described in Order 14 Rule 3 as available should be utilized for that purpose.

(3) After framing of the issues one more date should be fixed for Discovery and Admission if any. The court may *suo motu* call upon the parties to admit documents to save cost and time in the light of Rule 3A of Order 12.

(4) All the above preliminary work should be completed before the suit is fixed for final hearing within a period of three months from the date of presentation of the written statement."]¹

1. Substituted Rule 118, by C.S. No. 22.

**Note-** Before substitution of original Rule 118, read as follows—

"118. Presiding Judges should be careful to see that steps in connection with Discovery, Inspection and Admission are taken at proper stages of suits before they come on for hearing. In comparatively big and complicated cases it will be usually advisable, after the documents have been lodged in court, to allow at least one date (and more if necessary), before issues are framed for Admissions, Discovery, Interrogatories or the like and to fix, if necessary, one or more dates after the issues have been framed for the completion of this preliminary work."



## 2. Recording of Evidence

**119.** The use of a typewriter for recording depositions and memoranda of evidence is strongly recommended, provided the typing is done by the presiding Judge and the signs or initials each page as soon as he completes it, except in the case referred to in Order 18, Rule 14.

**120.** (1) Parties shall file in the respective Courts their list of witnesses who are in attendance give evidence on their behalf not later than 10-20 a.m. Lists presented after the prescribed hour shall not be accepted unless the Court is satisfied that there was sufficient reason for failure to present them within time.

(2) The omission of the name of a witness from the list filed shall be no bar to his being examined, if presented for examination at the trial, provided, that a regular petition for leave to examine is filed showing sufficient cause for the delay in attendance but nothing shall be allowed to any witness on account of his expenses for the day's attendance, if he is neither entered in the lists, nor actually examined, unless he can satisfy the Court that his attendance was delayed by unavoidable circumstances.

**Note 1-** Pleders signing and filing their list of witnesses should satisfy themselves that the witnesses named therein are actually present in Court. The Court may, in any particular case, if it so desires get the list verified by one of its own officers.

**Note 2-** This rule in no way affects the obligation on the part of witnesses to attend punctually at the time for which they are summoned (*vide* Rule 52 *ante*).

**Note 3-** The scale laid down in Rule 569 *et seq*, should be the rate at which witnesses, costs are recoverable.

## CHAPTER 9

## JUDGMENT, DECREE AND COSTS

### 1. Judgment

**121.** All judgments, proceedings and depositions should be written only on one side of foolscap paper, one quarter margin of every sheet being left blank. Long judgments must not be recorded on the order-sheet. [See also Rule 337(1)].

**122.** (1) If a vernacular word, not being a technical, revenue or law term is used in the judgment, its nearest English equivalent shall be added in brackets immediately after the word.

(2) Witnesses should be described in the judgment not merely

by their numbers but by their names. The names should be given not necessarily on each occasion of reference or at full length, but sufficiently to denote the persons meant. Indian dates should generally be followed by their English equivalents within brackets.

**123.** Rules 1 and 3 of Order 20, Civil Procedure Code require that judgment shall be pronounced and dated and signed in open Court at the time of pronouncing in open Court. Even if it be not possible for pressure of work to read out the entire judgment in Court, at least the findings on each issue and the concluding portion of the judgment shall be read out in open Court and the judgment signed and dated thereafter. Where the entire judgment is not read out in Court, reasonable time shall be given to the lawyers of the parties to read the written judgment after the judgment is signed and dated, by keeping the signed judgment with the Peshkar of the Court during the day on which it is delivered.

[“**124.** When after the conclusion of the hearing of a case the judgment cannot be delivered at once, as provided in Order 20 Rule 1, a date not later than fifteen days of such conclusion shall be fixed by an order. If on the date so fixed also the judgement is not ready for delivery another date not later than thirty days shall be fixed by an order explaining reasons for the delay. Delay, if any, beyond thirty days shall be explained in writing to the District Judge as well as the Registrar (I & E). If the Court committing the default is the District Judge explanation in writing shall be to the Registrar (I & E).”]<sup>1</sup>

**125.** Every Judge proceeding on leave or transfer must write

1. Substituted Rule 124, *vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002) pp-309-321.]

**Note-** Before substitution of original Rule 124, read as follows—

“**124.** When after conclusion of arguments the presiding judge cannot conveniently give judgment at once on account of the complexity of a case, or the necessity to consider many rulings he shall record an order fixing a day certain for pronouncing judgment of which due notice shall be given to the parties or their pleaders (Order 20, Rule 1). If the judgment is not ready on the day fixed, it should be adjourned to another fixed date of which due notice should be given to the parties or their pleaders.

**Note 1-** Dates for cases adjourned for judgment shall be entered in column 2 of the Daily Cause list [Form No. (M) 2].

**Note 2-** If a judgment is not delivered immediately after the close of the case, it shall be delivered within a reasonable time after the close of the case which shall not ordinarily exceed a fortnight. If the judgment is not delivered within the aforesaid time, for the reason the delay shall be recorded in the order-sheet at the time of delivering judgment.”

judgments in all cases and appeals heard upto and including the stage of arguments, unless the inability is due to illness or sudden making over of charge. In such cases, the Judge shall before his departure submit a statement in Form No. (S) 3, with the necessary particulars entered in the appropriate columns and the reasons in the remarks column for not being able to write judgment.

**Note**— District and Additional Judges should submit the statement to the High Court and [“Civil judge (Senior Division)”]<sup>1</sup> and [“Civil judge (Junior Division)”]<sup>1</sup> to the District Judge as in the Last preceding rule.

**126.** Judgments may be written during Court hour only after the day's Cause Lists have been completed.

**127.** Judgments in *ex parte* cases shall state specifically and explicitly which of the reliefs in the plaint are granted against which of the defendants.

**128.** Judgments shall state specifically whether any or what interest (including interest *pendente*) is allowed, and also whether interest is to turn only on the sum recovered under the decree or both on that sum and costs.

[**128 A.** The cause title of the Judgments and decree in Civil Cases shall contain the names and descriptions of the parties. The Judgment shall also contain in appendix at the end of judgment in the following manner—

(A) **Plaintiff's Exhibits :**

Ext — 1  
Ext — 2  
Ext — 3

(B) **Defendant's Exhibits :**

Ext — A  
Ext — B  
Ext — C

(C) **Exhibits Produced by witnesses :**

Ext — X<sup>1</sup>  
Ext — X<sup>2</sup>  
Ext — X

1. Substituted for the Words “Subordinate Judge” and “Munsiff” *Vide* C.S.No. 22. Notification No. HC.XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002)] pp-309-321.

(D) **Court Exhibits :**

Ext — C<sup>I</sup>  
Ext — C<sup>II</sup>  
Ext — C<sup>III</sup>

(E) **Plaintiffs witnesses :**

PW — 1  
PW — 2  
PW — 3

(F) **Defendant's witnesses :**

DW — 1  
DW — 2  
DW — 3

(G) **Court witnesses :**

CW — 1  
CW — 2  
CW — 3]<sup>1</sup>.

**129.** Every Judge hearing or deciding a civil suit proceeding or appeal, shall note in the final order or judgment and the decree, the powers or special powers (if any), exercised by him in disposing of such suit, proceeding or appeal.

**130.** (1) Shorthand-typist may be employed by judicial officers of all grades to record judgment; provided that a certificate be attached by the presiding Judge that it has been recorded at his dictation and is correct and each page of the judgment is attested by his signature.

**Note**— Stenographers when not employed on the work of the Courts to which they are attached, may usefully be lent to other officers of the station who require their services.

(2) When a typewriter is used by the presiding Judge himself, he should append a certificate to the effect and attest each page by his signature.

**131.** When a judgment is not written by the Judge himself with his own hand each page of it shall be attested by his signature and the judgment shall bear a certificate that it was written by the amanuensis at his dictation in his presence and that it is correct.

1. Inserted as new Rule 128A, *vide* C.S. No. 20, Notification No. H.C. XI-4/81/3972/RC., dated the 11th March, 1993.

**132.** Final judicial orders in all classes of cases or proceedings, or orders requiring judicial discretion or discrimination shall be written or typed by the presiding Judge himself.

## 2. Drawing up of Decrees

**133.** (1) Decrees of District and ["Civil judge (Senior Division)"]<sup>1</sup> should ordinarily be drawn in English, but the Court may in special cases direct that decrees be drawn up the language of the Court.

(2) Decrees of ["Civil Judge (junior Division)"]<sup>1</sup> shall ordinarily be drawn up in the language of the Court, but the Court may, in special cases or if the parties so desire, direct that decrees be drawn up in English.

**134.** In drawing up a decree, the following instructions shall be observed—

- (1) A decree must agree with the judgment and be not only self contained, so that it may not be necessary to refer to any other document or paper for its understanding and execution, but also precise and definite in its terms;
- (2) A decree (*ex parte* or otherwise), shall specify clearly and distinctly the nature and extent of the relief granted, what each party affected by it is ordered to do or forbear from doing and other determination of the suit (Order 20, Rule 6). Every declaration of right made by it must be concise yet accurate; every injunction, simple, definite and plain;
- (3) If a decree is affirmed on appeal, the terms thereof shall be recited, so as to make the appellate decree complete in itself. If a decree is varied or modified, the relief granted in lieu of, or in modification of that originally granted shall be fully and accurately set out. If a decree is reversed, the relief granted to the successful party shall similarly be stated;
- (4) In a decree, the decretal amount shall be written both in figures and words;
- (5) In each decree, whether passed in an original suit or in an appeal, there shall be a note, below the names of

1. Substituted for the Words "Subordinate Judge" and "Munsiff" Vide C.S.No. 22. Notification No. HC.XI-4/81/255/RC. Dated 14th June, 2002. [Published in the Assam Gazette Part IIB, dated July 17, 2002 (w.e.f. 14-6-2002)] pp-309-321.

the parties, stating, by reference to the serial number borne by each in the decree, which of the defendants or respondents, as the case may be, did not appear to contest the suit or appeal at the final hearing, as well as their total number.

**Note 1**—Petitions of compromise, maps prepared by the direction of, or accepted by, the Court and similar papers necessary to illustrate or explain the terms of the order passed shall be attached to and form part of the decree and shall be signed by the judge.

**Note 2**—Concise but definite particulars of the claim as stated in the pleading and the date of institution of the suit shall appear at the commencement of the decree. It is not necessary to transcribe the whole of the pleadings into the decree.

**Note 3**—It shall not be necessary to include the memorandum of appeal in the decree of the appellate Court.

**Note 4**—Where different valuation are put for purposes of jurisdiction and for payment of court-fees, both values should be stated in the decree. The amount claimed as *mesne* profits should be separately shown. In the case of an appellate decree, the valuation as given in the decree of the first Court should also be embodied.

**Note 5**—Interest, if any, allowed by the Court should be clearly shown in the decree and also the period for which and the rate at which interest has been allowed. It should also be clearly stated therein whether interest is to run on the decretal amount or on both that amount and Costs.

[**Note 6** – Deleted]<sup>1</sup>

**135.** The registered address for service filed by a party under Order 6, Rule 14-A or such address after subsequent change if any, shall be entered in the decree or formal order and not the address as given in the plaint. The following note shall be made in the decree or formal order below the names and address of the parties and the note shall be signed by the assistant drawing up the decree or formal order—

1. Deleted "Note 6" in Rule 34, vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated the 14th June, 2002. [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002 (w.e.f. 14-6-2002)] pp-309-321.

**Note**— Deleted "Note 6" originally read as follows—

"**Note 6.** As regard the proper form of decree when a compromise goes beyond the subject-matter of the suit, the directions of the Judicial Committee in the case of *Hemanta Kumari v. Midnapore Zamindari Co. Ltd.* (24 CWN 177 P.C.) should be followed. It has been laid down there, that "a perfectly, proper and effectual method of carrying out the terms of Section 375, C.P.C. (now Order 23, Rule 3) would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject-matter of the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be property confined to the actual subject-matter of the then existing litigation the decree taken as a whole would include the agreement" (per Lord Buckmaster in *Ibid*)."

"The addresses given above are the addresses for service filed by the parties with the exception of ..... who did not appear or omitted to file their address."

**136.** Decrees shall show properly the names of parties added, substituted or expunged in the course of the suit. In the case of a decree after a remand, it shall show the substitution or addition of parties that may have taken place during the pendency of the case in the appellate Court.

**137.** In contested title suits, etc., including mortgages suits, and in such other suits as the Court may consider of sufficient importance, decrees, shall be prepared by the Sheristadar, if it so directs.

**Note**— See Rule 357 and the Notes thereto.

[**138.** (1) Decree shall be ordinarily prepared within 7 days of the date of receipt of the record in the office after delivery of the judgment. The Bench Assistant shall send the record within 3 days of the date of the judgment to the office by making a note of the date of despatch in the margin of the order sheet against the order recording the delivery of the judgment.

(2) A register shall be maintained to record the date of despatch and the date of receipt of the record with signature of the Bench Assistant and the Decree writer.

**Note**— As far as possible decrees should be prepared in the order of the dates of disposal of cases"]<sup>1</sup>

#### **Case Law**

Order 20 Rule-6A CPC - Rule 138 of Civil Court Rules & Orders of Gauhati High Court (2002). Delayed drawing up of decree has nothing to do with merits of adjudication and has no adverse effect on its validity - **Md. Serajuddin -Vs- Md. Abdul Khaleque**, AIR 2005 Gau. 40.

1. Substituted "Rule 138" vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated the 14th June, 2002. [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002 [w.e.f. 14-6-2002]] pp-309-321.

**Note**— Before substituted "Rule 138" originally read as follows—

"**138.** Decrees shall ordinarily be prepared within seven days of the date of the receipt of the record in the office after delivery of judgment. For the purpose of exercising a check upon the work of the Bench Assistant and the decree-writer, the former shall, before he send the records to the office, note the date of such despatch in the margin of the order-sheet against the order recording the delivery of judgment.

**Note**— As far as possible decrees should be prepared in the order of the dates of disposal of cases.

**139.** (1) As soon as a decree has been drawn up, and before it is signed, a notice of the fact shall be given in the prescribed Form No. (M)5, which, shall be maintained in the form of a register. The parties or their pleaders shall be given facilities to examine the original record, when perusing the draft decree. If the draft decree has been correctly drawn up, it shall signed by the party or pleader perusing it. If the party or pleader considers that there is a clerical or arithmetical error in the draft decree or that the draft decree is at variance with the judgment, he shall point out the error or variance to the Sheristadar, who shall either make the necessary correction himself or obtain the orders of the Court. The decree shall then be signed by the presiding Judge after he has satisfied himself that it is in accordance with his Judgment.

["(2) The notice in Form No. (M)4, should be maintained in the form of a registrar. Besides a copy thereof shall be displayed in the notice board of the court. On the expiry of the fourth day of such display of the notice in Form No. (M)4, the notice shall be deemed to have been received by the pleader or the party.

(3) To ensure that the decrees are prepared correctly and timely the Judge shall in the order recording the delivery of judgment invariably add the following sentence – "Prepare decree accordingly and put up for signature within fifteen days from today, latest on....."

(4) The Judge shall satisfy himself that the decree has been drawn up in accordance with the judgment and shall make an autograph note stating the date, month and year on which the decree was signed and initial the corrections or alterations."

**Note 1**— When a party or his pleader perusing the draft decree has no objection to file he shall sign it.

**Note 2**— The result of objection (if any) should be recorded in the order sheet.

**Note 3**— Pleders are responsible for seeing that decrees are correctly drawn up and that the costs are rightly calculated.]<sup>1</sup>

#### **140. Decrees of formal orders in the nature of decrees need not**

1. Renumbered sub-rule (2) as sub-rule (3) and substituted sub-rule (2) of Rule 139 vide C.S. No. 22, Noti. No. HC. XI-4/81/255/RC. Dated the 14th June, 2002. [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002 [w.e.f. 14-6-2002]].

**Note**— Before substituted sub-rule (2) of Rule 139, originally read as follows—

"(2) The Judge signing the decree shall make an autograph note stating the date, month and year on which the decree was signed and initial the correction or alterations.

be drawn up under the Code in all cases, even though the orders concerned may be adjudications upon rights claimed or defences set up : for instance, final orders under Order 9, Rules 9 and 13; Order 21, Rules 2, 58, 91, 92, 99, 100, 101; Order 41, Rules 19, 21, 23; Order 47, Rule 1, C.P.C. and interlocutory orders made during the course of a suit or execution proceeding. If, however, any such order is capable of execution or affects execution by reason of adjustment of costs to be paid by one party to the other, it is desirable that a formal order showing the result of the case and containing a concise expression of adjudication be drawn up in the order-sheet. If costs have to be paid by one party to the other, such costs should be shown in the order-sheet as well as the names both of the party by whom they are to be paid and also of the party who is to receive the same, so that the latter if desirous of executing the order may not be compelled to take a copy of the judgment.

### 3. Costs

**141.** (1) Costs in decrees should be very carefully calculated. A party who has been awarded costs in the judgment or order shall be allowed all such costs, charges and expenses, as shall appear to have been necessary or proper for the attainment of justice or for defending his rights [See Rule 117(2)].

(2) Subject to the discretion of the Court, expenses like the following should not ordinarily be deemed as proper and necessary costs—

- (i) Court-fee stamps on all applications dismissed, or not allowed or not pressed;
- (ii) Court-fee stamps on all unnecessary or defective applications or applications to suit the convenience of a party such as, for adjournment of hearing, for time to file written or other statement or to take some steps, for showing cause in case of any default or omission, for withdrawing a claim for amendment of any pleading or petition, *etc., etc.*;
- (iii) Expenses of filing and proving all unnecessarily incurred;
- (iv) Expenses of filing and proving all unnecessary documents or documents which the other party was not previously called upon to admit by notice (Order 12, Rule 2) or exhibiting all unreasonable interrogatories (Order 11, Rule 3);

- (v) Process-fees for serving persons dismissed from the suit, or found by the Court to have been unnecessarily impleaded, or the claim against whom has been dismissed, withdrawn or not prosecuted;
- (vi) Charges incurred in procuring the attendance of unnecessary witnesses;
- (vii) Expenses which appear to the Court to have been incurred or increased unnecessarily or through procrastination, negligence or mistake.

["(3) The court in awarding costs under Rule 1 of Order 20A extant since 1.2.1977, shall follow the rules as under:-

In respect of—

- (a) Expenditure incurred for the giving of any notice required by law before the institution of suit the costs shall not exceed Rs. 100/-;
- (b) Expenditure incurred for giving any other notice given before institution of the suit though not required below the costs shall not exceed Rs. 25/-;
- (c) Expenditure incurred for typing *etc.* of pleadings filed by the party the costs shall be @ Rs. 3.00 per page;
- (d) Charges paid by a party for inspection of the records of the court for the purposes of the suit the costs shall be @ Rs. 1.00 per record;
- (e) Expenditure incurred by a party for producing witnesses, even though not summoned through court the same expenses as determined under Rule 569 post for witnesses summoned through court shall be the costs;
- (f) Charges incurred by a party, in the case of appeals for obtaining any copy of judgment and decree required to be filed along with memorandum of appeal the costs shall be in accordance with costs of copies prescribed under Rule 482 post."¹

**Note—** When the claim in a suit valued at above Rs. 50 is decreed in part, reducing the value below Rs. 50, court-fees on all necessary applications should be calculated at the proper amount payable on the reduced value.

1. Added sub-rule "(3)" in Rule 141 *vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated the 14th June, 2002. (w.e.f. 14-6-2002)] pp-309-321.

**142.** Every Judge should at the time of passing order on each application note whether or not the costs of it should be costs in the cause.

**143.** Where "proportionate costs" are allowed, such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim. When "corresponding costs" or "costs according to success" are decreed, the assessment is to be made as if the suit had originally been brought at an amount representing the value of the successful part of the claim.

## CHAPTER 10

### EXECUTION OF DECREES

#### 1. General

**144.** Every application For execution shall be made in Form No. (J)43 in volume II and set out all the particulars required therein fully and accurately.

**Note-** In pursuance of clause (b) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (*Act V of 1908*), the allowance hereinafter mentioned have been declared by the respective authorities to be exempt from attachment by order of a Court namely—

**(A) By the Central Government—**

The following all allowances payable to any public officer in the service of the Central Government, or any servant of a Indian Railway, or of a cantonment authority, or of the port authority of a major port—

- (1) All kinds of travelling allowances.
- (2) All kinds of conveyance allowances.
- (3) All allowances granted for meeting the costs of - (a) uniforms and (b) rations.
- (4) All allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities including hill stations.
- (5) All house-rent allowances.
- (6) All allowances granted to provide relief against the increased cost living.

(Notification of the Government of India, Home Department No. 186/37, dated the 2nd October, 1940 as amended by the Government of India, Ministry of Home Affairs, Notification No., 57/4/49-Ests., dated 31st May, 1949).

**(B) By the Governor of Assam—**

The following allowances payable to any public officer in the service of the Government of Assam—

- (i) All kinds of travelling allowances;
- (ii) All kinds of conveyance allowances;
- (iii) All allowances granted for meeting the cost of (a) uniforms and (b) rations;

- (iv) All allowances granted as compensation for higher cost of living in localities considered by the State Government to be expensive localities including hill station;

- (v) All house-rent allowances.

**145.** The filing of a copy of the decree along with the execution petition is not compulsory, but if it is not possible to verify the correctness of the particulars in the application for execution from the Court register, etc., the Court may require the applicant to produce a certified copy [Order 21, Rule 11(3).]

**146.** All applications for execution, whether subsequently rejected or not, shall be entered in a register in Form (R)5, as soon as they are filed. They shall have affixed to the top left hand corner a slip of paper as in Rule 42 on which has been written the name of the first decree-holder seeking execution and of the first person against whom execution is sought and of the filing pleader. This slip will be dealt with as in Rule 43.

**147.** Every application for execution shall ordinarily be brought up before the presiding Judge for orders on the next day after it is presented and not later than the second working day following the day of its presentation with all defects and objections to the application, if there are any, noted thereon by the ministerial officer-in-charge of the file, unless the Court itself extends the time for the purpose, and if a searching-fee of four annas [*vide* Rule 482(1)(b)] has been paid by means of a court-fee-stamp affixed to the application, information available in the office which will enable the defects to be remedied shall also be noted on the back of the application.

**148.** If the officer, whose duty is to check applications for execution, has reason to believe that the amount with interest (if any) due upon the decree, or other relief granted thereby or any cross-decree, is not correctly entered, he will refer to the Court for the correct amount and execution will issue for the amount as stated by the Court subject to any objection by the decree-holder or applicant for execution.

<sup>1</sup>[**148A.** Every presiding officer should appoint a day or two every week to hear Execution cases on a priority basis and Execution

1. Added as new Rule "148A" *vide* C.S. No. 22, Notification No. HC. XI-4/81/255/RC. Dated the 14th June, 2002. (w.e.f. 14-6-2002) [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002 (w.e.f. 14-6-2002)] pp-309-321.

cases and Miscellaneous Judicial cases arising there from should be fixed on such a day or days if so appointed. An attempt should be made to dispose of simple execution cases within 6 months and the complicated ones within 12 months.”]

**149.** Every application for attachment of movable property in the possession of the judgment-debtor under Order 21, Rule 10, shall be accompanied by payment into Court of the costs of issuing the process for attachment and if so required, custody fee as well as fee for the coming and going of the process-serving peon (*vide* Rule 549, Note 1) for so many days as the Court shall order. The costs of issuing the proclamation of sale under Order 21, Rule 66, shall be paid into Court, as soon after the attachment is made, as the Court may direct.

**Note**— If the decretal amount for which execution is sought does not exceed twenty rupees neither the custody fee nor the fee for the coming and going of the process-serving peon shall be levied.

**150.** Upon the hearing of the execution petition, the Court shall ascertain whether the provisions of the Code and these rules have been complied with and shall determine whether notice thereof is to be served on any person. If the petition is admitted, the Court shall adjourn the further hearing to a fixed day and the applicant shall (unless otherwise provided elsewhere) within three days or such other period as may be fixed by the Judge, bring into Court the fees prescribed for issue of processes, the required number of processes duly filled up, and, if the application is for the arrest of the debtor, the subsistence money fixed by the Judge under Order 21, Rule 39(1). At the adjourned hearing, the Court may, if the prescribed fees processes and subsistence moneys have been put in, order process to issue; or in the case of default, may extend the time for payment and filing of processes, or dismiss the petition. Provided that the Court may, if it thinks fit, on admitting the petition, in any case in which the prescribed fees, *etc.*, and subsistence moneys have been paid, order process to issue forthwith.

**151.** Where an application is made under Order 21, Rule 15, by one or more of several joint decree-holders unless a written authority signed by the other decree-holders, for the applicant to execute the decree and to receive the money or property recovered

is filed in Court, the Court shall give notice of the order, if any, passed for the execution of the decree to all the decree-holders who have not joined in the application; and may also in its discretion give notice of any application for payment or delivery to the applicant, of any money or property recovered in execution, or may make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.

**Note**— The cost of such notice shall be borne by the decree-holders applying for execution or applying for payment, as the case may be.

**152.** (1) Each peon entrusted with a warrant for execution of a decree for money shall be given by the Nazir a duplicate carbon receipt-book in the prescribed Form No. (A)30 bearing a distinguishing number, containing a number of receipts and their duplicate carbon copies serially numbered and preceded by the Book Number, the total number being certified on the cover by the Judge in charge of accounts.

(2) The Nazir shall keep a register in which he shall enter all duplicate carbon receipt-books received by him, showing (a) the date of receipt, (b) the serial number of each book, (c) the number of receipt it contains, (d) the name of the peon to whom the book is issued, (e) the number of process in the process register, (f) nature and number of case, (g) the date of issue, (h) the peon's signature for it, (i) the date of return and (j) the Nazir's signature. A separate duplicate carbon receipt-book is to be issued to each peon, and no new book shall be issued to him until the one already issued is exhausted and returned.

**Note**— The register prescribed above shall be preserved for three years from the date of the last entry in it.

(3) The Nazir shall keep all blank or exhausted books under lock and key.

(4) The peon receiving any payment shall give a receipt therefor and shall obtain the signature or thumb impression of the prayer to the declaration of payment on the counterfoil and shall in his service report invariably mention the number and date of the receipt granted. In the case of illiterate payers, the peon shall make every endeavour to obtain the signature of a literate witness on the back of the counterfoil. He shall also sign legibly the entry in the counterfoil. The receipts should be written legibly and all alterations

must be duly attested. The amount realised by the peon must be paid into Court immediately after his return to the station and a carbon counterfoil attached to the process concerned. The Nazir shall, on the return of any process (for the recovery of money) by a peon, whether executed or not, scrutinise the service report with the duplicate carbon receipt-book and if accurate, initial the counterfoils, and shall not make over any other process to such peon till he has done so. The Nazir shall record the return of the counterfoil (or of the unused form, as the case may be) in the register of receipts. If the receipt has been used, the Nazir shall send the counterfoil with the service report to the Court concerned, to be filed with the record of the case. Defects or suspicious circumstances should be at once reported to the court.

(5) After each trip, the peons should deposit their duplicate receipt-books with the Nazir who should keep them under lock and key in the office. They should be reissued to the peons when going out again for service of processes which involve the realisation of money, a note being made of the date in the register of receipts when this is done.

(6) It shall be the duty of the Nazir to explain clearly to the peons the directions contained in this rule and to satisfy himself every time a peon returns the processes and the receipt-book that its several provisions have been strictly complied with.

(7) When a peon dies, retires or is dismissed from service, the duplicate carbon receipt-book in Form No. (A)31, issued in his name, if not already in possession of the Nazir, shall be recalled and each page of the unused receipts cancelled by the Judge in-charge of Nazarat under his signature; a note of cancellation shall at the same time be made in the register prescribed by clause (2) above.

**153.** An order under Order 21, Rule 24, appointing an officer to sign processes execution shall be in writing. Processes for attachment of movables, delivery of possession of immovable property and warrants of arrest should be signed by the presiding Judge himself.

**154.** When no action is taken by the plaintiff or the defendant in respect of any attached property in the custody of the Nazir which has been attached before judgment under Order 38, Rule 7,

within six months of the disposal of the suit in which such attachment has taken place, the Court may, after notice to the parties, pass such orders as it may think fit, for the disposal of the property and if it is sold by order of the Court, the sale-proceeds shall be credited to Government.

## **2. Payment and Satisfaction**

**155.** If the person entitled to immediate receipt of money or his duly authorised agent and the payer are both present in Court and payment is applied for, the money may with the leave of the Judge be passed at once direct from the one to the other. In such case the Court shall record an order in the case for payment to the person so entitled who shall forthwith file an acknowledgment of receipt signed by him; and satisfaction *pro-tanto* of the decree or order, if any, in pursuance of which the money is paid, shall be entered.

**Note 1-** Care must be taken to see that no officer of the Court receives or becomes in any way responsible for the money, and that no receipt for it is given by the Court or any officer of Government.

**Note 2-** Payment shall not be directed to be made to the pleader of the applicant unless his Vakalatnama contains and express authority for the purpose or a separate instrument distinctly confers on him the authority to receive payment (see Rule 786).

**156.** Except when payment is made to the decree-holder under the last preceding rule, all moneys recovered by an officer of the Court, or received by the officer conducting a sale shall be paid into Court in manner prescribed. Such moneys will only be paid out of Court on an application made for that purpose in writing.

**157.** The notice required to be given under Order 21, Rule 1 (2)(a), Civil Procedure Code, shall be issued in Form No. (P)19 in the manner contemplated in Rule 1 (2)(b) *ibid* after payment of the necessary costs. The issue of the notice should be noted in the appropriate Suit Register.

**Note 1-** The challan tendering the money or the forwarding letter when money is remitted by money-order (see Rule 159) shall be accompanied by a sheet containing particulars regarding the number of suit or proceeding, date of decree or order and amount payable under it, due date in the case of instalment, name of the decree-holder or other person entitled to the money and his full postal address.

**Note 2-** When money payable under a decree is paid into Court, whether in execution of the decree or not, the payment shall be noted in the column for the purpose in the Suits Register and also on the order-sheet of the Suit.



**158.** When a decree is adjusted in whole or in part under Order 21, Rule 2(1) or any payment is made under it, an unstamped certificate in the following form shall be presented to the Court without any formal written application. The certificate must not contain any extraneous matter or anything in the nature of a prayer, if it does or if it accompanies a formal written application, it shall be treated as an application and stamped under Court-fees Act. The stamp shall not be charged as costs against the Judgment-debtor.

In the ..... Court of the ..... At.....  
 ..... Plaintiff,  
 Versus

..... Defendant.

Suit No. .... of 19.....

Certificate by decree-holder under Order 21, Rule 2(1), Civil Procedure Code.

I ....., decree-holder, certify to the Court payment or adjustment in the following terms of the amount of Rs. .... in the above suit by ..... on the .....  
 ..... Decree-holder.

**Note 1-** The payment or adjustment under Order 21, Rule 2 (1), shall be noted in the appropriate column of the Register of suits and also on the order-sheet of the suit.

**Note 2-** If the record of the suit has been deposited in the District Record Room, the connected papers and necessary order shall be sent to the Record-Keeper who shall enter in red ink a note of payment or satisfaction (as the case may be) in the order-sheet of the record of suit and the entry shall be signed by the Judge in-charge of the record-room.

**Note 3-** If the record of the suit is before the Court of appeal, the connected papers shall be sent to that Court, where a note of the payment or satisfaction (as the case may be) shall be made in red ink in the order-sheet of the suit record and signed by the presiding Judge of the Court of appeal.

**159.** Unless it appears to the Court that the personal attendance of the party is necessary, money payable in satisfaction of a decree or order may be transmitted to the Court by postal money-order or in Government universal currency notes. In such case, the payer shall, before transmitting the money, send to the Court concerned, in a pre-paid registered cover, a schedule containing

full particulars regarding the intended deposit, and state the manner in which the money is to be sent.

**Note-** The schedule referred to shall state the name of person(s) on whose behalf the money is sent, name of person(s) to whose credit the amount is to be placed, number of suit, appeal or matter, or execution case (if any) the decree or order in several sums (principal, costs and interest) and the total amount thereof and such other information as may be necessary.

**160.** The money-order or the cover and the amount shall be received by the Nazir under the order of the presiding Judge of the Court concerned who will have the requisite challan prepared and the procedure laid down in the rules in Part VI regarding the deposit of collections made by an officer of the Court (Rule 623 *et seq.*) shall then be followed and the money duly entered in the Accounts and paid into the Treasury.

**161.** When the decree-holder or other persons entitled to any money deposited into Court in satisfaction of a decree or order has, in his execution petition or otherwise, requested that the money be forwarded to his address by money-order, and, if after audit of the application according to the rules in Part VI (Rule 644 *et seq.*) it is found that there is no objection to the payment of the money, the Court shall order the amount to be remitted to the applicant by money order, less postal commission and the value of the Court-fee stamp for the application of payment if required by law. The money in deposit shall then be withdrawn by the Nazir from the Treasury in the usual manner and sent forthwith by postal money-order.

**162.** Two register shall be maintained in the following forms in manuscript showing the receipt of decretal amounts from judgment-debtors, *etc.*, and payment to decree-holders, *etc.*, by money-order. The Judge-in-charge shall initial each entry in the registers and see that the amount received is paid into the Treasury and that withdrawn from the Treasury is remitted to the decree-holder with the least possible delay.

## (1) Register showing the receipt of decretal amount by money-order.

Date of receipt	From whom received	Particulars of receipt	Amount received			No. and date of challan by which the money is paid into the treasury	Initial of the Judge-in-charge	Space for affixing money-order coupons
			Principal	Incidental charge	Total			
1	2	3	4	5	6	7	8	9

## (2) Register showing the remittance of decretal amounts by Money-order.

Date of remittance	To whom remitted	Particulars of remittance	No. and date of payment order by which the money is withdrawn from the treasury	Amount remitted			Date of receipt or acknowledgment	Initial of the Judge-in-charge	Space for affixing money-order receipts and payees acknowledgment
				Principal	Incidental charges	Total			
1	2	3	4	5	6	7	8	9	10

### 3. Attachment

#### A.- Attachment of Immovable Property

**163.** Every application for attachment and sale of immovable property shall in addition to other particulars required by law or any rule, contain a description of the property sufficient to identify it, its area and annual rent and shall also state clearly and specifically the nature and extent of interest of the judgment-debtor, the character of the tenancy and the nature of the land, e.g. whether it is a tenure or under-tenure (permanent or otherwise) or taluk, or estate, or an occupancy holding, or non-occupancy holding, or a holding at fixed rates, or under raiyati holding, or homestead land, etc., etc. Where the lands are situate within an area for which a record-of-rights has been finally published, it shall further contain a statement of the serial number or numbers or borne by the tenancy in the record-of-rights and of the area and rental according to such record.

**164.** Every application for an order for sale of immovable property shall, in addition to the verification and the particulars required by Order 21, Rule 66 (3) state everything known or believed by the persons verifying the same to exist which relates to the nature, or affects the value of the property to be sold, and shall further state that he is not possessed of any further information regarding it.

**165.** (1) When the application is for the attachment of any revenue-paying or revenue-free lands, or of any share in such lands, than in addition to the particulars required by Order 21, Rule 13, the area of the whole revenue-paying or revenue free tenure shall be stated in the application in every case in which this information has been recorded in the Collector's register.

(2) When an application is made to a Civil Court for the attachment of an estate, or share of an estate, borne on the revenue-roll of a district, the annual amount of revenue for which the whole estate is liable shall be stated in addition to the particulars required by Order 21, Rule 14 to be specified in the authenticated extract from the register of the Collector's Office.

**166.** All orders made by Civil Courts under Order 21, Rule 54 for the attachment of estates and shares of estates paying revenue to Government shall be immediately notified to the Collector of

the district within which such estates or shares of estates are situated.

**167.** Whenever the attachment of an estate or share in an estate is legally and formally withdrawn such withdrawals shall in like manner be notified to the Collector.

**Note 1-** For Form of intimation of withdrawal from attachment, see Form No. (M)14, Volume II.

**Note 2-** Rules 166 and 167 do not apply to tenures, holdings or other tenancies held under the khas Mahal.

#### B.- Attachment of movable property and livestock

**168.** (1) When property is made over to a custodian under Order 21-A, Rules 3(a) and 5, the Schedule of property annexed to the bond shall be drawn up by the attaching officer in triplicate, and dated and signed by—

- (a) the custodian and his sureties;
- (b) the attaching officer;
- (c) if willing, the person whose property is attached and made over;
- (d) two respectable witnesses.

(2) One copy will be made over to the person whose property is attached, one copy will be made over to the custodian and one copy will be retained by the attaching officer to be filed with the record.

**169.** Whenever attached property is kept in the village or place where it is attached under sub-clause (b) or Order 21-A, Rule 3, a schedule of the property shall be drawn by the attaching officer in duplicate and dated and signed by the attaching officer, two respectable witnesses and the person whose property is attached. A copy of the list shall forthwith be sent to the Court and the other copy shall be made over to the person whose property is attached.

**170.** When any property is taken back from a custodian, he shall be given receipt for the same.

**171.** The officer deputed to attach movable property shall be furnished with a certificate endorsed on the writ stating the period for which the fees and charges required under Article 3 of Rule 549 post have been paid.

**172.** When the property seized under Order, 21, Rules 43 to 45 is in the opinion of the attaching officer of a value not exceeding

twenty rupees, he shall inform the judgment-debtor or in his absence any adult male member of his family that it will be sold at once without the issue of any proclamation under Order 21, Rule 66. If however, the decree-holder or the Judgment-debtor or any other person acting on behalf of either of them in their absence, objects to such a course, the attaching officer shall refer the matter to not less than three respectable adult persons of the locality of whom a member of the local Gaon Sabha or Anchalik panchayat if then available, should be one and if the decision of the majority be that the value does not exceed twenty rupees, it shall be final and the attaching officer shall forthwith sell the property by auction after giving to intending purchasers such reasonable notice as is possible under the circumstances of the case. If the value determined exceeds twenty rupees the attaching officer shall deal with it as prescribed under Order 21-A, Civil Procedure Code, and supplemented by the rules of this Chapter.

**Note**— When property is sold under the provisions of this rule, no percentage or poundage as prescribed in Article 7, Rule 580, shall be levied.

**173.** Whenever attached property is kept in the village or place where it is attached and the judgment-debtor gives his consent in writing to the sale of the property without awaiting the term prescribed in Order 21, Rule 68, the attaching officer shall receive the same and forthwith forward it to the Court for orders with an accurate list of the attached property.

**174.** When attached property is made over to a custodian under Order 21-A, Rules 3(a) and 5 and such person enters into a bond as provided therein, it shall be brought by the attaching officer and form part of the record. The bond shall be stamped with a Court-fee stamp of eight annas in Assam under Article 6, Schedule II of the Court-Fees Act. If the stamp is not available locally, the attaching officer shall realise the required value of the stamp in cash and make it over to the Nazir with the bond as soon as he returns to the station and the Nazir will attach to the bond the necessary court-fee stamp.

**175.** The attaching officer shall be provided with a separate receipt book of the kind prescribed by Rule 152 of this Chapter and a receipt shall be given by him for all sums paid to him under these rules. The amount realised must immediately on return to

the headquarters be paid into Court and dealt with in the manner laid down in the Account Rules.

**176.** If necessary costs are paid by the decree-holder to the attaching officer and the attached property is removed to the court-house under Order 21-A, Rule 4, Civil Procedure Code, the attaching officer shall file in Court a memorandum of the expenses attending the removal supported by vouchers. Any surplus left in his hands shall be paid into Court. If however, the decree-holder be available when the attaching officer files the memorandum of expenses attending the removal, any surplus left in his hands may instead be refunded to the decree-holder who shall give a receipt for the same.

**177.** The Nazir will from time to time inspect livestock brought to Court under Rule 5 of Order 21-A, and satisfy himself that the animals are being properly fed and cared for and report to the Court if they are ill or under nourished.

**178.** A register shall be maintained by the Nazir in the prescribed Form No. (R)18 showing the securities, jewellery and other valuable articles in his custody. A separate register should also be maintained in Form No. (R)19 for ordinary movables and livestock attached in execution cases whether they are produced in Court or left in the custody of a surety.

#### 4. Sale

**179.** (1) If the property to be sold is an estate or a share of an estate paying revenue to Government, and revenue the payable on account of such estate or share exceeds the sum of Rs. 500, the proclamation of sale shall be published in the official *Gazette*.

(2) This rule shall not interfere with the discretion of the Court under Order 21, Rule 67 (2), in directing, whenever it thinks fit a similar publication of the intended sale of any other property or properties attached in execution of a decree.

**180.** (1) The District Judge shall select a local news-paper or news-papers and notify the name or names to the public and the subordinate Courts.

(2) Thereafter, if any Court in the exercise of its discretion orders publication of a sale proclamation under Order 21, Rule 67 (2) in respect of a particular sale, it should be published in one

of the newspapers selected by the Court from such approved list.

**181.** (1) Subject to the proviso in Order 21, Rule 43, sale of property in execution of decrees in Courts (not being Courts of Small Causes) shall commence on a certain day in each month to be fixed by the District Judge for Courts at headquarters. For Courts at outlying stations, the sale dates in each month shall be fixed by the District Judge in consultation with the presiding Judges of those Courts or any of them as he may think fit.

(2) It will be in the discretion of the District Judge to divide the Courts at headquarters into as many groups as may be convenient for the speedy completion of sales. The days fixed for the sales of each Court or group of Courts may be consecutive or otherwise according to the number of sales to be held on each day and care must be taken to fix sale dates of each Court or group of Courts at such intervals that all sales advertised for a certain day are completed on that date.

(3) Sale dates of outlying Courts should be fixed on the same principle and where there is more than one Court in the same station sale dates of all the Courts should not ordinarily be fixed for the same day.

(4) The same days shall not ordinarily be fixed for the sale of both movable and immovable property.

**Note**— Sales must commence punctually at 11.30 a.m. and every endeavour should be made to complete the sales on the dates fixed in the sale proclamations. Judicial sale being an important function of the Court it is very desirable that presiding Judges should from time to time, have the sales conducted in the Court room in their immediate present.

**182.** All cases in which property, except property of the nature specified in the proviso to Order 21, Rule 43 or Rule 187 of this Chapter is to be sold at each place of sale, be entered in lists for each place in the prescribed Form No. (M)3, separate lists being maintainable for cases relating to moveable property and for those relating to immovable property. Such lists shall be prepared by the office and after they have been approved and signed by the presiding Judge sent to the Nazir who shall, at the conclusion of the sale, every day, return the lists to the presiding Judge for inspection.

**Note**— Form No. (M)3.— List of cases in which sales are to be held, shall be destroyed after six months.

**183.** At the stated hour, which shall be 11-30 a.m. upon each fixed date, the sales shall be commenced, and shall be carried on in the order stated in the lists above mentioned, unless otherwise directed by the Court. No sale shall continue after sunset; but sales shall be held from day to day and throughout the day except when the Court is closed, and until the lists are finished; provided that this rule shall not interfere with the adjournment of any particular sale according to law (Order 21, Rule 69).

**184.** The Court may, if it so desires and if circumstances justify it, adjourn the sale to a date within the month.

**185.** Except as regards property of the kind mentioned in Rule 187, sales in execution of the decrees of any Court shall be conducted in that Court by the Nazir or other officer of the Court or by such other person as the Court may appoint in this behalf in the immediate presence of the presiding Judge. Where this is not possible sales may be held in another place within the Court premises to be selected by the presiding Judge; provided that the Court executing the decree may if it seems fit, for reasons to be specified in writing, direct, in the interest of the parties that the sale be held at any other time and place within its jurisdiction; and when acting under this last-mentioned proviso, shall except for good reasons to the contrary, give preference as regards choice of time and place to the wishes of the Judgment-debtor.

**Note 1**— An order appointing an officer or other person to conduct a sale under Order 22, Rule 65 shall be in writing.

**Note 2**— When sales at district headquarters are not held in the immediate presence of presiding Judges, in their own courts, they may be held at any other place in the Court premises determined by the District Judge in consultation with the presiding Judges of other Courts, or any of them, as he think fit.

**Note 3**— The person conducting the sale is only a recorder of bids and his function ministerial. All bids must be placed before the presiding Judge who shall not acceptance or rejection. No sale is complete till the Court formally accepts the bid and declares the purchaser under Order 21, Rule 84.

#### Case Law

*Rule 185* — Provides the method of sale of property in execution of a decree. This Rule is to be read with Order 21, Rule 84 of the C.P.C. (old). Failure to deposit the requisite amount of the bid money nullifies the sale. **Tapesh Chandra Bagchi -Vs- United Bank of India Ltd. and other** A.I.R 1969 (A & N) 10.

**186.** When a Court does not accept a bid or orders resale, the reasons therefore shall be recorded.

**186(A).** When leave to bid is necessary, under Order 21, Rule 72, Civil Procedure Code, in cases in which the Court may consider that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Court for reasons to be recorded, to give leave to bid at the sale, only on condition that applicant's bid shall not be less than the amount so fixed by the Court, which amount shall, as far as practicable, be determined with reference to the probable marked value of the property or of the lot or lots into which the property is divided for sale.

**187.** All sales of livestock, agricultural produce, articles of local manufacture, and of other things commonly sold at country markets which have not been brought to Court, shall unless the Court otherwise directs, be held at such market in the neighbourhood of the place where the goods were attached, as may appear likely to be for the greatest advantage of the debtor, regard being had to the prospect of good prices and to the saving of expense in conveyance and carriage.

**188.** If it appears to the Court that immediate sale of movable property in the custody of the Nazir is necessary, *e.g.*, by reason of its being perishable, it may authorise him to sell the same by public auction and may give such directions as to date and place of sale and manner of publishing the same as the circumstances of the particular case demand.

**189.** The proceeds of a sale effected in execution of a decree will only be paid out of Court on an application made for that purpose in writing.

**190.** (1) When a decree-holder applies for leave to purchase under Order 21, Rule 72, no order to set off the purchase money against the amount of the decree shall be made on that application. If a decree-holder-auction-purchaser desires such set off, he shall file a separate application for the purpose at the time of the payment of the poundage fee.

(2) Upon the hearing of such petition, the costs of execution including the poundage fee shall be added to the decree, and in cases in which the amount of the purchase money exceeds the amount of the decree and such costs, the decree-holder-auction-

purchaser shall pay into Court the sum of 25 percent. On the balance of the purchase money after deducting the amount of the decree and of such costs and shall pay the balance at the expiration of fifteen days in accordance with Order 21, Rule 85, Civil Procedure Code.

**191.** (1) When a sale is set under Order XXI, Rule 89, 90 or 91 the entire purchase money including the amount deducted for payment of the poundage fee, should ordinarily be refunded to the auction-purchaser.

(2) When application to set aside a sale is made under Order XXI, Rule 89, Civil Procedure Code, the court may direct the application to deposit the poundage fee and other costs before entertaining the application.

(3) When application to set aside a sale is made under Order XXI, Rule 90, Civil Procedure Code, the Court may direct the applicant to deposit the poundage fee and may then include the amount in the costs (if any) recoverable from the executing creditor.

(4) When a sale is set under Order XXI, Rule 91, Civil Procedure Code, the Court may make an order enabling the auction-purchaser to recover the poundage fee as part of his costs from the executing creditor.

**192.** Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act (XI of 1878), are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken to enforce the requirements of the said Act.

**193.** Civil Courts notifying sales of any estate or shares of an estate to the Collector, after the same have been confirmed, should send to the Collector, punctually, in the first week of each quarter, a statement of the sales of estates or shares of estates, which have been confirmed during the previous quarter. A blank statement is to be submitted if no sales have been confirmed.

**Note**—The statement should be submitted in Form No. (S)20.

**194.** Whenever the Civil Courts may have occasion to sell, in

execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, they shall, on confirming the sale, forward a copy of the sale certificate to the Commanding Officer of such cantonment or station, for his information and for record in the Brigade or other proper office.

**195.** When after the confirmation of a sale of immovable property an application is made for a certificate of sale and the requisite stamped paper is filed, a draft shall be made in the prescribed form and the original prepared from the draft.

**Note 1-** If the connected record has been despatched to the District Record Room, under the rules for the periodical transmission of records, the Court should call for it for preparation of the sale certificates and no cost is leviable from the party for transmission of the record.

**Note 2-** Applications for sale certificate need not bear any court-fee stamp. If no stamps are filed with the application for sale certificates the application should be rejected. If the application is filed with insufficient stamps, reasonable time shall be allowed to file the deficit on failure to make up the deficiency within the time allowed, the application shall be rejected. In all cases of rejection, the stamps originally filed with the application shall be return to the applicant, whose dated receipt shall be taken in the remarks column of Form No. (R)27.

**Note 3-** For form of certificate of sale of land, see Form No. (J)47, Vol. II.

**Note 4-** Sale certificates prepared shall be notified as soon as they are ready for delivery, in a register in Form No. (M)4, with necessary modifications. Entries will be made in the register from day to day and signed by the presiding Judge, who will see that the register is laid at some conspicuous part of the Court room for the information of all concerned.

**Note 5-** No applications for copies of sale certificates shall be entertained by Civil Courts. If such copies are required, application may be made for the purpose to the Registry Office.

**196.** (1) All certificates of sale of immovable property, besides showing as accurate a description of the property sold as the nature of each case will permit, shall invariably mention the date on which the sale became absolute.

(2) The following particulars should be inserted in every case,—

- (i) The “addition” (as defined; section 2 of the Indian Registration Act, 1908), of the person who is declared to be the purchaser;
- (ii) Particulars sufficient to identify the property, as required by Section 22 (2) of the same Act;
- (iii) The name of each registration sub-district in which any party of the property is situate.

(3) Where necessary the following particulars may be given in a Schedule to the sale certificate—

- (i) Whether the property sold is subject to encumbrances, if so, the exact nature of the encumbrances. This must be in accordance with what is stated in the sale proclamation;
- (ii) Area;
- (iii) Boundaries;
- (iv) If the property sold is a whole revenue-paying estate then tauzi number on the rolls of the Collectorate;
- (v) If it is a share of a revenue-paying estate, and if separate account has been opened in respect of the same then the number of the separate account;
- (vi) The amount of revenue payable for the same;
- (vii) If the property sold is a tenure, then the name of the proprietor, and whether the name of the judgment-debtor is recorded in the proprietor's books;
- (viii) If there has been a record-of-rights, then the cadastral survey number of the property sold.

(4) The description given of the property in the certificate of sale must correspond with that given in the sale proclamation prepared under Order 21, Rule 66 of the Code.

**197.** After the sale certificate has been prepared from the draft under Rule 195 *ante*, both sale be carefully compared. If they are found to agree, the sale certificate shall be made over to the party applying for it and draft shall be certified to be a true copy and forwarded to the Registry Office without delay. On each copy the amount of stamp duty paid on the original certificate under Article 18 of Schedule I of the Indian Stamp Act, 1899, as amended by the Assam Stamp (Amendment) Act, 1956 must be noted. Under Article 24(a) of the same Schedule such copies are not themselves required to be stamped. In their preparation, however, forms printed on paper of a uniform size, and having a margin for binding, must be used.

**198.** (i) For the purpose of forwarding copies of sale certificates to the Registry Office, Civil Courts shall use High Court Form No. (S)2, i.e., Assam Schedule VII, Form No. 56.

- (ii) Copies of sale certificates shall ordinarily be sent in batches accompanied by a single form; if necessary use should also be made of reverse of the top half of the form for noting particulars of the copies despatched.
- (iii) The printed form must be used by all Civil Courts irrespective of whether they are situated at the same station as the Registry Office or not.
- (iv) Copy of sale certificates, with the prescribed form duly filled in, shall, in the case of courts located at the same station as the Registry Office, be sent by peon and in other cases by unregistered post.

**Note**—Acknowledgments of the receipt of copies of sale certificates sent to the Registry Office by registered post shall be numbered and noted in Column 12 of the register Form No. (R)27, they shall then be filed in serial order on a new file and made up ultimately into yearly bundles which shall be preserved for three years.

**199.** Each court shall maintain a register in the prescribed Form No. (R)27 in which only those applications for sale certificate which have been filed with the requisite stamps or with insufficient stamps shall be entered in serial order.

**Note**—This register shall be examined at least once a week by the presiding Judge, who particularly see that no undue delay is made in calling for records from the record-room or in the preparation of sale certificates and the fact of such examination having been made together with such instructions or remarks as may appear necessary shall be entered by him.

### **5. Arrest, Imprisonment and Release**

**200.** Whenever a person who has been arrested under a civil warrant appears to be too ill to be removed from his residence or other place where he may be found after his arrest and before he is brought to Court, the officer who has arrested such a person shall forthwith report the matter to the Court and shall remain with the prisoner and retain him in his custody until the order of the Court is obtained under Section 59(2), Civil Procedure Code.

**201.** All Civil Courts when committing judgment-debtors to prison, shall, for the information of the Jail authorities, enter the amount due on the date of the decree and the interest and costs of execution subsequent to the decree, separately in the warrant [Form No. (P)27].

**202.** Warrants for release should not be despatched by a Court

after sunset, or, if so despatched, should be endorsed with instructions for release as early as possible next morning.

**Note 1**—The above provisions apply to witnesses arrested under a warrant and detained in the civil prison.

**Note 2**—Release orders under Clauses (ii) and (iii) of the proviso to Section 58 (1), Civil Procedure Code of a person imprisoned in a Civil Prison shall be in Form No. (P)28, Vol. II.

### **6. Resistance to Execution (Anticipated and Actual)**

**203.** (1) A decree-holder praying for Police help in execution shall state in his application the full reasons thereof, supported, if required by an affidavit. The Court may further examine the decree-holder or such other persons as it thinks fit touching the necessity of Police help. If upon a consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger to the public peace, he may, after recording his reason for so doing, make a request to the Superintendent of Police of the District for such Police aid as the latter may be able to give in the execution of the writ. It is to be understood that Police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

(2) The requisition to the Superintendent of Police should state in brief the need for such aid, the number and rank of men required, the nature of the process and the place where it is to be executed. It will be for the Superintendent of Police to decide how best and when he will be in a position to offer the help sought.

- (a) Costs for Police help shall be charged in executing decrees in cases where such help is considered necessary because of apprehensions of violence or obstruction from the judgment-debtor himself. The party concerned shall be ordered to deposit such costs for the service as the Superintendent of Police may require under the rules of the department;
- (b) Costs for Police aid shall not be levied in cases where Police help is required because of conditions of a general character, such as the locality being in a disturbed state or a class of people, similarly situated, being likely to



make a common cause with the judgment-debtor and resist execution.

- (c) In cases where a levy of costs is ordered, such costs shall be added to the costs of execution.

**Note 1**—It shall be the duty of the Court to decide in each case under which category it falls, that is whether Police aid should be given under Clause (a) above in which case the party has to deposit necessary costs or under Clause (b) in which case no costs are to be charged.

**Note 2**—Police aid shall not be requisitioned or taken in effecting the arrest of judgment-debtors unless it is clear that no other means will possibly achieve the required result.

**204.** (1) When a process-serving peon or other officer in execution or service of any process entrusted to him (*e.g.* writ of attachment, warrant of arrest, *etc.*) is resisted or obstructed by the judgment-debtor or any other person; or when property duly attached or the person duly arrested is illegally snatched away from his custody by any of them, he shall immediately send a report to the Court concerned from the place of occurrence.

(2) If the Court upon a consideration of the facts disclosed in the process-server's declaration or affidavit (when called for), supplemented, if necessary, by the examination on oath of the process-server or any other person alleged to have been present at the occurrence, is of opinion that a complaint to a Criminal Court is necessary in interest of justice, it shall make a complaint accordingly, carefully observing the provisions of Section 195 (1)(a), Criminal Procedure Code.

(3) If the case is of sufficient importance and the Court is of opinion that a competent lawyer should be engaged for the prosecution for the ends of justice and better conduct of the case, it should write to the District Judge who will then, if considered necessary, move the proper authority for the purpose.

(4) The Court should, after the termination of the criminal case (if any), make a request to the Criminal Court to forward a copy of the judgment with a view to see whether there has been any adverse finding or comment against the conduct of the peon concerned, necessitating the taking of disciplinary action.

### **7. Execution by another Court**

**205.** An application for the transmission of a decree to another

Court for execution shall be made by a verified execution petition and shall state, in addition to the particulars set out in Clauses (a) to (i) inclusive of Order 21, Rule 11 (2) any facts relied on by the applicant to bring the case within the terms of Section 39 and Order 21, Rules 4 and 5 and shall specify the Court to which transmission of the decree is sought.

**206.** Decrees sent to any High Court for execution under Section 39 and certificates communicating the result of execution proceedings to the High Court under Section 41 of the Code, shall be accompanied by covering letters.

**207.** When a decree is to be sent for execution to a Court at another station within the same district, it shall be addressed to the Judge-in-charge of that Court (unless the name of the particular Court is stated in the application for transfer) where there are more Courts than one and it shall be the duty of that Court to make it over to the Court within the local limits of whose jurisdiction it is to be executed without the necessity of any application in this behalf.

**208.** If after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the transfer apply for execution thereof, the Court to which the decree has been sent shall certify the fact to the Court which passed the decree and shall return the decree to that Court.

**Note**—When a decree is executed, the certificate as to the result of execution proceedings required by Section 41, Civil Procedure Code, shall be sent by the transferee Court with promptitude.

**209.** Every Court shall maintain a register in the prescribed Form No. (R)22 showing the decrees transferred to another Court for execution and those received from other Courts. The register shall be in two parts, one for decrees transferred to other Courts and the other for decrees received from other Courts.

### **8. Execution by Civil Courts in India of Decrees of Courts outside India and vice versa**

**210.** (1) The following countries have been declared as "reciprocating territories" under Explanation to Section 44-A, Civil Procedure Code. The Superior Courts with reference to those territories are as shown against each territory—

Reciprocating territories (1)	Superior Courts (2)
1. Burma .....	High Court at Rangoon and all District Courts in Burma.
2. Colony of Aden .....	Supreme Court of the Colony.
3. Colony of Fiji .....	Supreme Court of the Colony.
4. The United Kingdom of ..... Great Britain and Northern Ireland.	High Court in England Court of Session in Scotland High Court in Northern Ireland Court of Chancery in the Country Palatine of Lancanster.  Court of Chancery of the Country Palatine of Durham.

(2) All District Courts in India and all other Courts whose civil jurisdiction is subject to no pecuniary jurisdiction, have been declared by the reciprocating territories to be Superior Courts, provided in the case of the latter class of Courts, that the decree sought to be filed in the Superior Court of the reciprocating territory is sealed with a seal showing that the jurisdiction of the Court is subject to no pecuniary limit.

## CHAPTER 11 COMMISSIONS

### 1. General

**211.** The Presiding Officer of every Court should keep a watch on the actual issue of the writ to execute commissions.

**212.** (1) Every application for the issue of a commission shall state,—

- (a) The grounds thereof and shall, unless the Court is satisfied, be supported by an affidavit;
- (b) The value of the suit or subject-matter;
- (c) The length of time that the execution of the commission is likely to occupy;
- (d) The estimated expenses;
- (e) The details regarding the locality where the commission is to be executed and its distance from the Court; and

- (f) In the case of commission for local investigation or for inquiry into accounts, *mesne profits*, etc., the specific points on which the inquiry is desired.

(2) If the application is granted, the Court shall, after consulting the parties or their pleaders, estimate the probable duration of the execution of the commission and fix the amount of Commissioner's fees, travelling expenses etc., and direct payment thereof into Court within a specified time, and the commission shall not issue unless the sum fixed by the Court is paid full within the time limited therefore provided that the Court may from time to time direct that any further sum be brought into Court by any party.

**213.** (1) Before issuing a commission the Court shall—

- (a) Call on the party at whose instance the commission is granted to supply copies of the pleadings or abstracts thereof (if by reason of the length of the pleadings the Court permits the filing of abstracts), and issue for the use of the commissioners;
- (b) Satisfy itself that all interrogatories, cross-interrogatories, maps, papers, etc., necessary for the execution of the commission and the costs ordered to be paid, have been put in.

(2) Strict compliance with the orders regarding deposit of commissioner's fees in respect of every commission should be insisted on and except on very good grounds, the time once fixed for the purpose should not be extended.

**214.** (1) Every order for the issue of a commission shall appoint a date allowing sufficient time for its execution and return.

(2) If on receipt, of the commission or after starting work in execution thereof, the commissioner is of opinion that the time allowed is insufficient he should at once refer the matter to the Court for orders stating the extra time required, and must not postpone his application until the time allotted is about to expire. If the application appears to be reasonable, additional time may be allowed, the parties being duly informed of the revised date.

**Note**—Commissioners should not be paid by, nor should they accept directly from the parties any money on account of fee, travelling expenses, etc. All such amounts must be paid into Court and commissioner should draw their fee, travelling allowance and other expenses from the Court in the usual way.

[“(3) All commissions issued shall be executed within the time fixed by the court or extra time granted under sub-rule (2) and the commission shall be returned to the court on or before the date so fixed. The date so fixed shall not be extended except on being satisfied by an application by the Commissioner showing sufficient cause for his inability to meet the time fixed. The court shall record the reasons for granting the extension if any.

(4) All order regarding commission and extending time for execution of the commission shall be in the hand writing of the Judge and not written by the Bench Assistant and the appointment of the Commissioner shall be promptly cancelled for willful delay, negligence *etc.*, on the part of the Commissioner in executing the commission. The defaulting Commissioner may be refused any remuneration and any remuneration already received may be asked to be refunded in appropriate cases.”]<sup>1</sup>

**215.** Commissions should not be executed piecemeal or at intervals. When the work of a commission has once begun, it shall be continued from day to day and throughout the day until it is completed, unless an adjournment is necessary in exceptional circumstances in which cases the commissioner should at once inform the Court and seek its directions.

**Note 1**— A day’s work consists of six hours.

**Note 2**— This rule does not preclude division of work in big commissions, among several commissioners.

**216.** The diary [Form No. (M)6] of the commissioners and the bills submitted by them should be scrutinised and passed for the amounts allowed as early as possible after submission of report. If the work is a long one and it cannot be determined whether it has been done satisfactorily and what remuneration would be proper without hearing evidence at the trial and the objections to the report of the commissioner, if any, the Court may allow a reasonable sum to be drawn from the money in deposit before the conclusion of the trial. In the case of a commission involving prolonged work, the Court may permit the commissioner to withdraw from time to time such sum as may appear necessary and reasonable on account of fee, travelling expenses, *etc.* All such payments before the completion

1. Added as new sub-rule “(3)” and “(4)” below Note of Rules 214 *vide* C.S. No. 22, Notification No.HC. XI-4/81/255/RC. Dated the 14th June, 2002. (w.e.f. 14-6-2002) [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002] pp-309-321.

of the work and the final settlement of the bill shall be subject to the condition that if the commission is found not to have been executed satisfactorily, or if the work turns out to be less than was expected, the Commissioner shall refund such sum as may be directed by the Court.

**217.** Whenever transmission by post is necessary for issue of a commission, whether to a court or to a pleader, the papers are to be sent and returned by registered post and the cost of so doing should be realised from the parties.

**218.** All instances of dilatoriness and negligence or unsatisfactory work should be noted in the appropriate column of the Register of Commissions [Form No. (R)34] and commissions should not be given to persons whose work is found to fall below a reasonable standard of efficiency or punctuality. In suitable cases, a report should be made to the District Judge for removal of name from the list of commissioners or such action as may be considered proper.

**219.** In order that District Judges may satisfy themselves that commissions are being fairly distributed and promptly and efficiently executed, a half-yearly statement should be submitted to the District Judge by each subordinate Court showing the particulars required to be entered in the Register of Commissions.

**Note**— Loose forms of the Register of Commissions [Form No. (R)34] should be used for the purpose of submitting the statement.

**220.** Selection of commissioners must in all cases be made by the presiding Judge himself and the order of appointment written by his own hand. Every care should be taken to ensure a fair and equitable distribution of commissions (*see* Rule 235).

## **2. Commissions to Examine Witnesses**

**221.** Whenever application is made for the issue of a commission to examine witnesses, the Court, in exercising its discretion upon the particular circumstances of the case, should require to be satisfied on the following—

- (a) That the application is made *bona fide*, *e.g.*, that it is not part of an endeavour to put a particular witness out of the way;
- (b) That it has been made in reasonable time so as to avoid unnecessary delay;

- (c) That the issue upon which the evidence is required is one which the Court ought to try;
- (d) That the witnesses to be examined can give evidence material to the issue;
- (e) That there is good reason why they cannot be examined in Court in the usual way.

**Note**— For fees of commissioners, see Rule 572.

**221-A.** Every order directing the issue of a commission for the examination of a witness under Order 26, Rule 4 (see also Section 76, Civil Procedure Code) shall state whether the commission is to be addressed to a Court or to a pleader.

**222.** Commissions under Order 26, Rule 4 (1)(c) of the Civil Procedure Code for the examination of the Government Examiner of questioned Documents or his Assistant should be issued to the Senior Subordinate Judge, Simla and normally should be so worded that either the Government Examiner or his Assistant can give evidence. In cases in which the Courts concerned consider it impossible to dispense with the appearance of such officers before them, application should be sent direct to the Government Examiner of questioned Documents, Intelligence Bureau, Ministry of Home Affairs, "Dormers", Simla-1.

**Note**— Such applications will ordinarily be accepted but may be refused at the discretion of the Government Examiner of Questioned Documents if they cannot be entertained without detriment to his other work.

**222-A.** Whenever the post is to be used for the issue of a commission, whether to a Court or to a pleader, the papers are to be sent and returned by registered post. The cost of doing this will be part of the regular cost of the commission. When the papers are transmitted to the Court of pleader otherwise than by post, such precautions as are possible shall be taken against the loss of any part of the papers. The packet may also be insured for any value which the party places on it if the party deposits the costs accordingly. Such costs will not form part of the costs of the commission.

**222-B.** Commissions addressed to a Court for the examination of witnesses resident beyond the jurisdiction of the Court issuing the commission, and not within the local jurisdiction of the High Court on its Original side, ought ordinarily to be directed to the Munsiff's Court within whose jurisdiction the witness resides.

**223.** If the fees received with a commission from a Court, whether within or outside the jurisdiction of the High Court, are insufficient to cover the cost of returning the papers by registered post and also, where the commission is issued by post to a pleader or other commissioner, the cost of Transmission by registered post to and from the commissioner, the issuing Court should be asked to remit the additional fee required before the commission is executed.

**224.** On receipt of a commission issued under Order 26, Rule 4, for the examination of a witness the commissioner should determine where he will proceed to execute it, i.e., whether (1) at residence of the witness, or (2) at some convenient locality in the neighbourhood of the Court, or (3) if the commissioner be a judicial officer, whether the witness shall attend in the Court or in the premises of the Court of such officer, proper arrangements being made, if necessary, for due privacy. As a rule a person to be examined by commission should attend the commissioner at the particular time and place specified in the notice issued; but discretion should be exercised in the examination of those whose attendance is ordinarily excused, such as women, persons unable to be removed from their houses owing to old age, sickness, or other bodily infirmity, or persons of rank exempted by an order under Section 133, Civil Procedure Code, from personal attendance in Court. In such cases the commissioner should endeavour to discharge his duty with due regard to the special circumstances and condition of the particular witness.

**225.** (1) While evidence should not as a rule be excluded by the commissioner on debatable grounds, he is nevertheless responsible for preventing abuse of the right of cross-examination and for keeping it within reasonable limits. Whenever it appears to him that cross-examination is being needlessly prolonged or other abuse of process is taking place, he should stop proceedings and bring the matter to the notice of the Court for directions.

(2) When a party fails to appear on the day and at the hour fixed for examination or applies for time, the commissioner should proceed *ex parte* if he is of opinion that adjournment is sought on frivolous or unreasonable grounds.

**226.** A Commissioner shall return the papers to the Court through which he received them, whether this be the issuing

Court or not. Proper precautions shall be taken against the loss of any part of them, and if it is necessary to send them by post, they shall be registered.

### 3. Commissions and Letters of Request issued to Foreign Countries

**227.** The Court should in all cases require a deposit for the expenses of executing a commission or a letter of request for the examination of witnesses in a foreign country and see that the sum is paid into court before issuing the commission or letter of request. The amount and the fact that it has been deposited should be stated in the letter forwarding the documents for transmission, provided that should the sum deposited proves insufficient, the Court may direct that any further sum or sums be deposited into Court by the party.

**228.** The issue of commissions or letters of request to foreign and commonwealth countries should, according to the instructions of the Government of India, follow diplomatic channels. Such documents should be forwarded to the High Court for transmission to the External Affairs Ministry of the Government of India through the State Government.

**229.** (1) The costs for the execution of a commission for the examination of a witness in the United Kingdom are about £ 25, if it is non-contentious. In cases in which the Central Government or a State Government is interested, the expenses will be paid by the High Commissioner for India in the United Kingdom and debited to the Government concerned. When the commission or letter of request is at the instance of a private party and routed through the appropriate Ministry of the Government of India, arrangement will be made for the execution of the documents only if the party interested deposits the sum of £ 25 sterling in favour of the High Commissioner for India in the United Kingdom, the draft in question being sent along with the documents, and undertakes to pay any excess over £ 25 if the expenses exceed that sum.

(2) The commission or letter of request and interrogatories both for the purposes of examination and cross-examination should be neatly prepared on good paper in a form presentable to the High Court of England. All these documents should be sent in duplicate in a sealed cover.

### 4. Commission for local investigation

**230.** (1) When a subordinate Civil Court, either of its own motion or on the application of a party, directs a local inquiry, the order for such inquiry shall be drawn up by the presiding Judge himself and shall contain the following matters—

- (a) Whether the inquiry is directed by the Court *Proprio motu* or upon application, and if upon application, from which party;
- (b) What the points are which require elucidation or ascertainment in that particular way;
- (c) Why such matter could not be proved or ascertained in the ordinary way by producing documents at the proper time and witnesses at the trial;
- (d) The instructions given to the commissioner.

(2) In all orders of investigation by a commissioner under Order 26, Rule 9, these rules shall be cited as well as the section or Order or Rule of the Code.

**231.** (1) If the enquiry is ordered, a proceeding shall be drawn up under the personal supervision of the presiding Judge in Form No. (J)34 or (J)33 according as the enquiry involves or does not involve survey work and relayment of maps or other documents. The proceeding should clearly and specifically define the points on which the report of the commissioner is required, and upon which it is to be evidence; and those points sought usually to be excluded which can conveniently, and ought under the law to be substantiated by the parties by evidence at the trial.

(2) The commissioner's duties should be strictly limited by the order to the points thus defined and he must confine his inquiry to those points and report on them only, without undertaking any other work at the request of the parties.

**Note 1**— When boundaries have to be refixed or maps have to be relaid, the description and names of the maps or chittas to be used and the particular work to be done in connection therewith should be specifically stated. Clear directions should be given as to the starting point of the inquiry. Commissioners should be instructed that the work of survey shall, where practicable, be connected with such permanent marks as may exist in the vicinity and that the map prepared shall show the permanent marks, the boundary of the disputed land, the boundaries of adjacent lands so far as may be necessary and the position of the settlement, revenue, and other survey lines if such position can be determined with sufficient accuracy, and such lines are relevant to the dispute.

**Note 2-** When fixing the date of return of the commission, due regard should be paid to the nature of the case, the quantity of work to be done and in the case of survey work, to the season of the year and the condition of the property to be surveyed. If on receipt of his commission, a commissioner is of opinion that the time allowed is insufficient, he should at once refer the matter to the Court for orders stating the extra time required and must not postpone his application until the time allotted is about to expire. If the representation appears to be reasonable, additional time may be allowed, the parties being duly informed of the revised date.

**Note 3-** When a commission is cancelled or withdrawn by the Court for dilatoriness or unsatisfactory work, or for any improper conduct on the part of a commissioner, or when adverse remarks regarding the commissioner's work or conduct are made in the Court's order or Judgment, the fact should be noted in the appropriate column of the register of commissioners.

**232.** No person other than the professional surveyors or pleaders who have obtained a certificate of proficiency in survey shall be enrolled in the list of persons qualified to execute survey commission or commission for local investigations which require a knowledge of surveying.

**Note 1-** When a commission has to be executed requiring the survey of a very large area in which the use of a theodolite is essential, it should be issued to a Technical Adviser trained to theodolite work or to an Assistant Settlement Officer or to a professional Surveyor which similar qualifications provided the services of a class I pleader commissioner are not available. If the services of a Technical Adviser or an Assistant Settlement Officer are required an application should be made to the Director of Land Records and Surveys, Assam.

**Note 2-** Hints and instructions for the guidance of commissioners in carrying out a theodolite traverse (with separate detail survey by plain table and chair, etc.) and in making field measurements with chain and compass will be found in a book issued for the purpose.

**Note 3-** In the case in which the tracing of Boundaries in undulating or hilly country is necessary, or in the case of mines, or in irrigations cases, in which the use of level is necessary or in cases involving the measurement and valuation of house property, or in other intricate cases, the commission should be issued to a thoroughly qualified and experienced professional person holding the required degree in surveying or Engineering, or other equally qualified person with special expert knowledge of the local conditions and duties he will be required to perform in connection with the execution of the commission.

**233.** (1) For each district there shall be a fixed number of persons determined by the High Court for the execution of all survey commissions arising within it. The number shall be fixed with due regard to the average number of such commissions issued during the last three years and stated separately for (a) the district headquarters and (b) the outlying stations. The number fixed for

each station shall be such that all commissions may be executed without unreasonable delay and at the same time the number of commissions allotted to each commissioner should be sufficient to earn for him a dependable income every year from this source. The number thus fixed shall not be allowed to exceed without the sanction of the High Court.

**Note 1-** Those pleaders who are prepared to give preference to the execution of commissions over their ordinary professional work should only be enrolled in the list of commissioners and busy practitioners who have neither inclination nor sufficient time to devote to such work should ordinarily be excluded.

**Note 2-** The Courts at each station should ordinarily issue commissions to the pleader commissioners listed for that station. If the hands of such commissioners are full and the number of commissions at one time is such that the execution by the commissioners for that station will not be effected without unreasonable delay or if there is no pleader commissioner listed for that station, the Court concerned will issue commissions to a pleader commissioner of the nearest station in the district, but travelling expenses in such cases will be allowed from the station from which the commission has originated. When a Court is obliged in aforesaid circumstances to appoint a commissioner of the nearest station, it may, in its discretion request the senior Munsiff of the station, or the District Judge, if it is a sadar station, to suggest the name of a pleader commissioner for appointment.

(2) The list shall contain the names of survey passed pleaders arranged in the order of their seniority according to the year of their passing the survey examination and of the station where each such pleader is practising, provided that if a survey passed pleader transfers his practice from one station to another he will occupy the last place in the list for the latter station and provided also that if a survey passed pleader suspends practice and thereafter resumes it, his name will be restored at the bottom of the list.

**Note-** If at any station there is at present an unpassed pleader commissioner, there should be a temporary list for the station showing his names which will be removed as soon as a survey passed pleader is enlisted for that station; the temporary list will then be abolished.

(3) Pleadors who pass the examination and practical test in all instruments including theodolite in particular and hold Class I certificates will be separately enlisted as Class I pleader commissioners and the rest as Class II and the former should always be chosen for relays or surveys requiring theodolite work.

(4) If the number of survey passed pleaders in the list exceeds the total number fixed for a station on account of addition of newly passed survey pleaders or transfer of survey passed pleaders from

another station, the names of such pleaders shall be placed in a supplementary list for the station. Pleaders in the supplementary list should be given survey commissions whenever the service of persons in the original list are not available on account of their being engaged in commission work or for other reason, or when they have already been given a good amount of work.

**Note-** Pleader commissioners included in the list who on account of infirmity or sickness are unfit for outdoor work and are unable to perform their duties promptly and efficiently, and persons above the age of fifty-five who are similarly incapable should not be entrusted with commissions. Pleaders whose professional engagements do not leave sufficient time for undertaking such work and who in consequence make delay in executing commissions should also be excluded. The names of such infirm or busy practitioners, should be reported to the High Court for being removed from the list.

**234.** (1) Applications for enlistment as pleader commissioners shall be forwarded for orders to the High Court by District Judge with their suggestions.

(2) District Judges will submit to the High Court at the end of each quarter a report as to whether any changes are necessary in the list of pleader commissioners maintained for their districts. An up-to-date list of pleader commissioners should be submitted along with the fourth quarterly report.

(3) The High Court will from time to time issue a revised printed list of pleader commissioners for all the districts. No change should be made in list except as directed by the High Court.

**235.** (1) Great care should be taken to see that commissions of all kinds are allotted to persons in the list in strictly fair order so as to endure equitable distribution of work and remuneration. (See Rule 220).

(2) Every commission issued by the Courts at district headquarters or in the outlying stations should be entered forthwith in a common register to be maintained at each station showing (a) the name of the Court and number of the case; (b) date of issue of commission; (c) nature of work to be done; (d) name of commissioner; (e) date fixed for return with extension, if any, as they are granted; (f) probable number of days the work may occupy; (g) date of actual return; and (h) the remuneration fixed.

(3) Every Court at a station should before selecting a Commissioner call for and consult this common register in order to

ensure a fair distribution of work and remuneration among all the commissioners. A commissioner should not have in his hand at one time more than such a number of commission as can be executed with reasonable promptitude.

**Note 1-** In order to enable a proper check to be made of the equitable distribution of work and remuneration as also of the number of commissions in the hands of a commissioner at one time, a sufficient number of pages of the register should be set apart for each commissioner in the list with a name index giving reference to the pages of the book.

**Note 2-** The District Judge should make a careful scrutiny of the half-yearly returns and also satisfy at the time of periodical inspection by an examination of the Register of Commissions and records that these rules are being strictly followed and commissions are being distributed in strictly fair order.

**236.** As soon as possible after the completion of his work the commissioner shall submit his report to the Court issuing the commission together with his diary [Form No. (M)6] maintained from day to day in English in the prescribed form.

**Note-** Field books should be inked in by the commissioner before the report is submitted.

**237.** The Court shall consider the objections, if any, of the several parties to the report of the commissioner and may accept the report or any portion of it or pass such orders as it thinks fit under Order 26, Rule 10(3).

**238.** Commissions for partition or for ascertaining mesne profits or damages, or commissions in execution proceedings may be given to pleaders who have not passed the survey examination unless a thorough knowledge of surveying is essential for the execution of such commissions.

### **5. Commissions for taking accounts**

**239.** (1) If in any suit or matter it is necessary to take an account, the order or interim decree of the Court shall contain the following directions as far as in the opinion of the Court issuing the commission they are adopted to the requirements of the case-

- (a) The nature of the account to be taken;
- (b) The date from which and the date to which the account is to be taken;
- (c) The name of the party by whom a statement of account is to be filed;

- (d) The periods within which the statement of account objection and surcharge are to be filed;
- (e) The date on which the commissioner is to submit his report;
- (f) Any other matter on which the court may think it necessary to give, or the commissioner may desire to obtain, its instructions.

(2) The statement of account shall be in the form of the debtor and creditor account and shall be verified by the accounting party or his agent. The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(3) The statement of an objection to an account, or to the report of a commissioner, shall specify the items to which objection is taken by reference to their number in the account or report, or the date of the item and page of a particular book of account.

(4) The statement of surcharge shall specify that amount with receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him.

(5) The statement of objection of surcharge shall also state (a) the grounds of each objection and surcharge, and (b) the balance, if any, admitted or claimed to be due; and it shall be verified by the affidavit of the party concerned or his agent.

(6) If any party fails to file his statement of account or objection and surcharge, within the period allowed, the commissioner shall report the fact to the court, and on the application of the defaulting party, the court may extend the period or direct the commissioner to proceed *ex parte* as regards such party or direct any other party to file a statement of account, or the court may proceed to decide the suit forthwith on the evidence before it.

(7) If the commissioner is unable to submit his report within the time fixed by the court he shall apply to the Court for an extension of the time giving reasons thereof and the Court may extend the time or cancel the commission and appoint a new commissioner.

(8) When the case before him is ready for hearing, the Commissioner shall, after reading the statements filed before him and after examining the parties, if necessary, ascertain the points on

which the parties are at issue and require them to produce their documentary or oral evidence on such points.

(9) After the evidence has been duly taken and the parties have been heard, the commissioner shall submit his report together with a statement in the form of a diary of the proceedings heard before him each day. If he is empowered under Order 26, Rule 12(1) to state his opinion on the matter referred to him he shall append to his report schedules setting out (a) the contested items allowed or disallowed, (b) the reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due, and (e) the name of the party by whom it is due.

**240.** When the report is received the Court shall fix a date within which the parties are to file their objection, and after considering the objections, if any, the Court may act upon the report or a portion of it or pass such orders as it thinks fit under Order 26, Rule 12(2).

**241.** When a person is directed to file his account periodically the Court shall fix the dates in each year before which his statement of account and balance are to be filed and on which the same will be considered.

**242.** In order to ensure greater efficiency in the quality of the work, commissions for examination and adjustment of accounts under Order 26, Rule 11 should be restricted to a small number of persons who are considered by the courts to be specially qualified for such work. The number of persons to whom account commissions are to be limited should be determined with due regard to the average number of such commissions issued by the courts at a station during the last three years.

**Note 1-** For each station a list shall be prepared of account Commissioners by the senior most judicial officer in consultation with the Judges of other courts and sent to the District Judge for his approval. It may not be necessary to have in the list more than 2 to 4 persons in outlying stations and a few more at Sadar. The list should be revised from time to time and the number adjusted according as the amount of work increases or falls.

**Note 2-** Every account commission issued by the courts at a station should be entered forthwith in a common register showing (a) the name of the court and the number of the case, (b) date of issue of the commission, (c) name of the Commissioner, (d) date fixed for return with extensions, if any, as they are granted, (e) probable number of days the work may occupy, (f) the date of actual return, and (g) the remuneration fixed. This register should be consulted by the courts before issuing commissions in order to secure fair distribution.



**Note 3**— See Rule 235 (1) and (3) and Note 1 thereto.

**Note 4**— Where the account to be examined are intricate or are kept in a way common to merchantile establishments or companies, or where auditing of accounts is necessary, the court may appoint a qualified auditor or person having special qualification.

## CHAPTER 12

### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS

**243.** “(1)” All suits in Civil Courts, for the prosecution or defence of which persons in the service of Government, officers in the army, or soldiers have obtained leave of absence, shall be disposed of by such Courts as soon as they are ripe for hearing, irrespective of the order in which they may stand in the register and as speedily as may be consistent with the due administration of Justice.

[“(2) In all suits by or against the Government or Public Officer acting in public capacity a date for settlement of the case if possible in the light of Rule 5-B of Order 27 of the Civil Procedure should be fixed and an adjournment if needed for the purpose of settlement may be granted.

(3) In all such cases the application if any, filed for leave provided under Section 80 of the Code of Civil Procedure shall be supported by an affidavit detailing the urgency of the relief sought in the suit.”<sup>1</sup>

**244.** In every case in which the Government Pleader appears for the Government as a party, or for the Government as undertaking, under the provisions of Order 27, Rule 8, Civil Procedure Code, the defence of a suit against a public officer in the service of the Government, he shall, in lieu of a vakalatnama, file a memorandum on unstamped paper signed by him, and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be in the terms of the following form:—

#### Title and particulars of the Suit

I, A. B., Government Pleader, appear on behalf of the Government (the Central Government, or the State of Assam, as

1. Added as new sub-rule “(2)” and “(3)” and re-numbered Rule 243 as Rule 243 “(1)” vide C.S.No. 22, Notification No. HC. XI-4/81/255/RC, dated the 14th June, 2002 (w.e.f. 14-6-2002) [Published in the Assam Gazette Extraordinary Part IIB (No. 29) dated July 17, 2002] pp-309-321.

the case may be), Respondent (or, etc.) in the suit : or on behalf of the Government which, under Order 27, Rule 8, has undertaken the defence of the suit, Respondent (or, etc.) in the suit.

**Note 1**— In every case in which the Government Pleader shall appear on behalf of any officer in the service of the Government, other than cases in which the Government has, under Order 27, Rule 8, undertaken the defence of the suit, such pleader shall file a vakalatnama in the same manner as any other pleader.

**Note 2**— Government Pleaders of the State of Assam have been appointed by the Central Government under Rule 8-B(a) of Order 27 of the Civil Procedure Code, to be Government Pleader in the cases referred to therein.

**245.** No civil judicial authority shall pay out money to Government Pleaders or persons acting on behalf of Government in any suit, unless they produce an authority in writing from the Collector or other officer representing Government, directing them to apply to the Court for such money.

## CHAPTER 13

### INCIDENTAL PROCEEDINGS

#### Appointment of Receivers

**246.** When any Civil Court attaches landed property paying revenue to Government and appoints a Manager under Order 49, Rule 1 of the Civil Procedure Code, information of the should always be given to the Collector without delay.

**247.** No Civil Court officer should be appointed a receiver except with the sanction of the District Judge which should be given in petty cases where the duties of the receivership cannot interfere with the officer's ordinary work, and in no cases shall remuneration be given to an officer so appointed.

## CHAPTER 14

### APPEALS AND REMAND

**248.** All memoranda of appeal in the subordinate appellate Courts shall be presented in open court either by the party in person or his “recognized” agent, within the meaning of that term in Order 3, Rule 2, Order 27, Rule 2, and Section 85, Civil Procedure Code or by a duly appointed pleader.

**Note**— Valuations for purposes of jurisdiction and for payment of court-fee shall be separately shown.

**249.** (1) In every case in which the memorandum is presented by a pleader, the grounds of appeal shall be drawn and signed by a pleader, who, at the foot of the memorandum of appeal, shall subscribe the following statement—

"I certify that I have examined the papers supplied to me and that, in my opinion, there are good grounds, as above set forth, for this appeal; and I undertake to appear and support the appeal before the appellate Court."

(2) If an appeal is presented by a party in person, or his "recognized agent" and a pleader is afterwards engaged, he shall before being allowed to appear to support the appeal, subscribe and file a memorandum containing the above certificate.

(3) This rule shall apply *mutatis mutandis* to the memorandum of cross-objection.

["(4) Where the appeal is against a decree for payment of money the court should ordinarily allow 7 days time to deposit the amount disputed in the appeal or to furnish security in respect thereof and only in an exceptional case of difficulty time may be extended upto 14 days [vide rule 1(3) of order 41 Code of Civil Procedure.]

(5) The appellate Court shall direct service of notice on the respondent by registered post simultaneously under Order 48 Rule 2 read with Order 5 Rule 19A."]<sup>1</sup>

**250.** <sup>2</sup>["(1)"] All memoranda of appeal presented, which on examination, are found to comply with the requirements of Order 41, Rule 1 of the Code of Civil Procedure, shall be entered in the Register of Appeal [High Court Forms Nos. (R) 6 (i) to (iii) and (R) (8)] irrespective of their possible rejection, or return, for failure on the part of appellants to pay the deficit court-fees demanded by the Court.

(2) Rule 45 to 49 in Chapter 2 ante will be applied in so far they are applicable by reading the words "memorandum of appeal" for the word "plaint" in those rules. Ordinarily every memorandum of appeal shall be registered by entering the same in the Register

1. Added as new sub-rule "(4)" and "(5)" in Rule 249 vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. dated the 14th June, 2002. (w.e.f. 14-6-2002) [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002 (w.e.f. 14-6-2002)] pp-309-321.

2. Added as new sub-rule "(2)", "(3)", "(4)" and Rule 150 re-numbered as Rule 150"(1)" by *ibid*.

of appeal on the day it is presented. Special orders of the presiding Judge has to be obtained by the Sheristadar if it cannot be registered within 24 hours of its presentation for any reason.

(3) Simultaneously with the registration of the memorandum of appeal it shall be laid before the presiding Judge for fixing a date of hearing of the appeal under Order 41 Rule 11. In fixing the date of hearing under Order 41 Rule 11 the presiding Judge should bear in mind provisions of Rule 11A of Order 41 as also the urgency of the appellants.

(4) An application under Order 41 Rule 5 for stay of execution of the decree appealed from shall be taken up along with the hearing under Order 41 Rule 11 and only if the court decides not to dismiss the appeal at that stage the question of stay or otherwise may be considered."

<sup>1</sup>["**251.** (1) When an appeal is presented after the expiry of the period of limitation specified therefore the application supported by an affidavit accompanying the appeal under Order 41 Rule 3A shall be dealt with by presiding Judge in accordance with sub-Rule 3A(2) of Order 41 before fixing a date of hearing of the appeal under Rule 250(3) above.

(2) Only if the application is not rejected at the stage indicated above a date of hearing of the application shall be fixed and notice shall be issued to the respondent. After the hearing of the application, on the same day the hearing under Order 41 Rule 11 shall be completed.

(3) If the respondent appears on the day of hearing of the application no further notice of hearing of the appeal as required under Rule 12 of Order 41 need be issued. If even after service of notice the respondent does not appear at the hearing of the application and the application is allowed the court may order issue of notice of hearing of the appeal as required under Rule 12

1. Substituted "Rule 251" vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC. dated the 14th June, 2002 (w.e.f. 14-6-2002), [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002] pp-309-321.

**Note-** Before substitution "Rule 251" originally read as follows—

"**251.** When an appeal is presented after the expiry of the period of limitation, it should not be admitted without due notice to all parties concerned, so as to secure, at the stage of admission, the final determination of any question of limitation affecting the competency of the appeal."

of the Order 41 if it deems fit.

(4) No order staying execution of the decree appealed from shall be passed before deciding to condone the delay in filing the appeal and completing the hearing under Order 41 Rule 11.”]

**252.** Appeals should not be transferred to the Court of an Additional District Judge or a Subordinate Judge until they are ready for hearing. Notices should be issued and all other preliminary work done by the office of the District Judge. (See Rule 726).

**253.** Every effort should be made to dispose of a regular appeal [“within 90 to 120 days”]<sup>1</sup> from its being filed. District Judges will closely watch the disposal of appeals and see that as far as possible older appeals are given preference to later appeals.

**254.** Ordinarily appeals when ready for hearing should be transferred one day during the latter part of each month to the different appellate Courts. The selection of appeals for such transfer should be made by the District Judge himself, who should for this purpose take into consideration the state of the files, civil and criminal, in the different Courts, the nature of the cases and other relevant matters so that the number of appeals transferred should not be more than such as each Court can be reasonably expected to dispose of in the next succeeding month or months. The appellate Courts may also well be asked to send their requisition for appeals before each transfer, indicating the number of each class of appeals that they expect to be able to dispose of within the next one or two months.

**Note**— More appeals should not be transferred to a Court so long as a sufficient number of cases already transferred remains undisposed of.

**255.** Appellate Courts should, after receipt of appeals by transfer, arrange their files in the way they think best and with a view to their being heard and disposed of, so far as possible, in chronological order.

**256.** If the day’s work is thrown out for some reason and any appellate Court finds enough time to dispose of one appeal or more, he should send for the required number from the District Judge from the list of ready appeals fixed for that day.

**257.** If, on account of accumulation of arrears, any Court is

1. Substituted for the words “within a year” in Rule 253 *vide* C. S. No. 22.

regularly engaged in disposing of appeals, there can be no objection to the transfer to that Court of batches of appeals at more frequent intervals and *pari passu* with the rate of disposal there, provided that the pending list of the Court is watched by the District Judge to see that appeals are not accumulating in that Court while latter appeals are being disposed of by other Courts.

**258.** In order to keep a watch over the disposal of appeals, a pending list should be kept and put up regularly before the District Judge both of all appeals pending and also of those pending in each individual Court in their serial numbers and on disposal the number should be crossed off. The period for which an appeal is pending after transfer to the Court concerned should be clearly indicated.

**259.** Appeals against interlocutory orders which hold up the progress of suits or proceedings in lower Courts, should be given precedence over all civil work other than that of a specially urgent nature and every endeavour should be made to dispose of such appeals quickly. A separate list should be kept of these appeals so that they may not be lost sight of.

**Note**— In this connection attention is invited to foot-note No. 2 of the register showing the cases of which proceedings have been stayed [Form No. (S)9].

**260.** If, on an inspection of the pending files of each Court, it is found that older appeals are long pending in some Court or Courts, the files of the appellate Court should be equalised from time to time by withdrawing such appeals and retransferring them to Courts having a lighter file.

**260-A.** As soon as ready appeals are transferred or withdrawn and retransferred to the different appellate Courts in batches, the District Judge shall notify the transfer in a list in Form No. (M)1, suitably modified in the prescribed manner, with a note that further details regarding such appeals will be found in the list (M)1 of the transferee Court. The District Judge shall, at the same time, send a copy of his list to the Secretary of the local Bar Association for information to the pleaders concerned. The receiving Courts shall enter these appeals in Form No. (M)1, on the date of receipt.

**261.** District Judges are expected to do as much civil appellate work as possible. If for any reasons they are prevented from complying with this instruction, such reason should be noted in their annual administration reports.

**Note-** In this connection, See also Rule 836.

**262.** The rules above are not intended to fetter in any way the discretion of the District Judge to deal with special or peculiar situation in such a manner as he may consider fit and proper.

**263.** The above rules *mutatis mutandis* to miscellaneous appeals except that every effort should be made by all appellate Courts to dispose of such appeals within three months from their being filed. District Judges are expected to keep in their own files and dispose of as many miscellaneous appeals as possible.

**Note-** In this connection attention is invited to foot-note No. 2 of the statement prescribed in Form No. (S)9 showing the cases of which proceedings have been stayed.

**264.** Lower appellate Courts should see that copies of the original Court's Judgment and decree filed with appeals are returned, without delay, on application by the parties concerned.

**265.** Cases in which findings are called for by the High Court shall take precedence over all civil work other than of a specially urgent nature. Such findings shall be submitted by the day named in the order of the High Court, unless an extension of time has been obtained from it on application with reasons in support of it.

**Note-** This rule applies equally to cases sent under Order 41, Rule 25 by lower appellate Courts to trial Courts and should be strictly observed by the latter.

**266.** The Court to which reference is made under Order 41, Rule 25 for trial of issue, shall on returning its finding, certify at the foot thereof the amount of costs (showing the items in detail) incurred by each of the parties to the case at the retrial, with a view to such cost being provided for in the decree that may be finally passed by the High Court or the lower appellate Court.

**267.** When a suit is remanded, a statement of the costs incurred in the appellate Court is to be appended to its order, that the same may be charged to the losing party in the revised decree of the lower Court, when costs are to follow the event.

**268.** When a suit is remanded for retrial and it again comes up in appeal after the next trial, the number and date of the previous appeal should be quoted in the memorandum of the subsequent appeal.

**Note-** The present Rule 268 should be preceded by the following Rule numbered as 268(1), *vide* C.S. No. 22.

**268.** (1) Where the appellate court remands a case under Rule 23 or under Rule 23A or frames issues and refers them for trial under Rule 25 it shall, under Order 41 Rule 26A fix a date of appearance of the parties before the original court. The date shall be so fixed that the parties will have no difficulty on grounds of distance *etc.* in appearing. The appellate court shall direct and supervise the sending down of the original record along with the appellate judgment *etc.* So that the same reaches the original court by the date fixed for appearance of the parties.

<sup>1</sup>["**269.** (1) The appellate Court shall direct and supervise the sending down of the original records along with the copy of its judgment and decree to the original court within the shortest possible time and invariably within 45 days of disposal of the appeal."]

(2) The appellate Court when returning the record of a case to the lower Court either on remand or under Order 41, Rule 25, shall draw the attention of the lower Court, in the letter forwarding the record, to any substitution or addition of parties that may have taken place during the pendency of the case in the appellate Court, and the lower Court shall in all cases check the entries and make the necessary alterations in its record and register of suits when the name of the deceased is to be found in it.

(3) In the case of appeals finally disposed of, all such amendments in the trial Court's records shall be made along with the necessary amendments in the appellate Court's records in the office of the appellate Court concerned. When the copy of the judgment and the decree (*vide* Order 41, Rule 37, Civil Procedure Code) showing the substitutions is received in the lower Court that Court shall cause the necessary alterations to be made in the register of suits when the name of the deceased appears in it."]

**Note-** As to appellate decree, see generally Rule 133 *et seq* and in particular Rule 134(3) and Note 3 thereto.

1. Re-numbered sub-rules "(1)" and "(2)" of Rule 269 as sub-rules "(2)" and "(3)" and added a new sub-rule (1) in Rule 269 *vide* C. S. No. 22, Notification No. HC. XI-4/81/255/RC, dated the 14th June, 2002 (w.e.f. 14-6-2002) [Published in the Assam Gazette, Part-IIIB (No. 29) dated 17th July, 2002] pp-309-321.

["**269-A.** (1) The notice to the lower Court under Order 41 Rule 13 shall specifically direct the lower court to send the original records within 10 days of the date or receipt of the notice and for that purpose the appellate court may fix in the notice itself.

(2) The Presiding Officer of the lower court shall be personally responsible to see that the records sent to the appellate court on notice as above are properly arranged and divided in accordance with the Rules in Chapter 17 post and the exhibits in the case are properly marked and signed.

(3) Any breach of the sub-rules above shall be reflected in the confidential Report framed under Rule 775 post.

**269-B.** Any breach of the Rules in this chapter committed by the appellate court should be reflected in the confidential Report framed under Rule 775 post."¹

(APPENDIX)

**NOTIFICATION**

**No. F-576/24J, dated the 15th August, 1925-** In pursuance respectively of section 29 and of Rule 26(b) of Order V of the First Schedule to the Code of Civil Procedure, 1908 (*Act V of 1908*), the Governor-General in Council is pleased to declare-

- (i) that the provisions of Section 29 of the said Code shall apply to the Courts in Nepal specified in the Schedule thereto annexed, and
- (ii) that the service by such Courts in Nepal of any summons issued by a Court in British India under the Code of Civil Procedure, 1908 (*Act V of 1908*) shall be valid service.

2. The Foreign and Political Department Notification No. 327-E-C, dated the 31st January, 1907, is hereby cancelled.

1. Added as new Rule "269-A" and "269-B" vide C.S. No. 22, Notification No. HC. XI-4/81/255/RC., dated the 14th June, 2002 (w.e.f. 14-6-2002) [Published in the Assam Gazette Part IIB (No. 29) dated July 17, 2002 (w.e.f. 14-6-2002)] pp-309-321.

**SCHEDULE**

**LIST OF NEPALESE COURT**

**Name of Amini Courts**

**Names of British Post Offices  
on the border nearest to the  
Amini Courts**

(1)

(2)

**Under the Birganj Goshwara Court -**

Birganj Amini Court of Dis- ..... Raxaul (District Champaran).  
trict Parsa.

Kalaiya Amini Court of Dis- ..... Adapur (District Champaran).  
trict Bara.

Kadarbanna Amini Court of ..... Bairagnia (District Muzaffarpur).  
District Rautahal.

**Under the Mahotari Sarlahi**

**Goshwara Court-**

Jaleswar Amini Court of ..... Madhwarpur (District Darbhanga).  
District Mahotari.

Sarlahi Amini Court of District ..... Sonbarsa (District Darbhanga).  
Sarlahi.

**Under the Saptari Goshwara Court -**

Hanumannagar Amini Court ..... Kanauli Bazar (District Bhagalpur).  
of District Saptari.

Siraha Amini Court ..... Jainagar (District Darbhanga).

**Under the Morang Biratnagar**

**Goshwara Court-**

Biratnagar Amini Court of ..... Jopani (District Purnea).  
the Morang Rangeh District.

**Under the Morang Jhapa**

**Goshwara Court-**

Jhapa Amini Court of District ..... Dighabank (District Purnea).  
Jhapa.

**Under the Bethari Goshwara Court-**

Bethari Amini Court of Dis- ..... Nautanwa Bazar (District Gorakh-  
trict Majhkhand pur).

Parasi Amini Court of Dis- ..... Thuthibari (District Gorakhpur).  
trict Parasi.

Butwal Chhote Court of Dis- trict Butwal Bazar.	.....	Shohratganj (District Basti).
Under the Butwal Taulihwa Khajni Goshwara Court- Taulihwa Amini Court of Khajahni.	.....	Shohratganj (District Basti).
Shiuraj Chhoti Court of Shiuraj.	.....	Shohratganj (District Basti).
Dhudhwa Pabar Amini Court.....		Jwrwa (District Gonda).
Under the Nepalganj Bankey Bardia Goshwara Court- Bankey Amini Court of Dis- trict Bankey.	.....	Rupaidiha (District Bahraich).
Bardia Amini Court of Dis- trict Bardia.	.....	Katarniaghat (District Bahraich).
Under the Trinagar Goshwara Court- Kailali Amini Court of District Kailali.	.....	Dudhuaghat (District Kheri).
Kanchanpur Amini Court of District Kanchanpur.	.....	Paliyakalan (District Pilibhit and Tanakpur (District Pilibhit).
Darchula Amini Court of District Baitadi.	.....	Jhula Ghat (District Almora).
Under the Dhankuta Gaunda Ilaq- Taplejung Amini Court	.....	Sukhia Pokhari (District Darj- jeeling).
Under the Ilam Guanda Ilaq- Ilam Amini Court	.....	Sukhia Pukhari (District Dar- jeeling).

## PART II

RULES RELATING TO ACTS OTHER THAN THE CIVIL  
PROCEDURE CODE AND THE COURT-FEES ACT

## CHAPTER 15

**1. The Provincial Small Causes Courts Act, 1887 (IX of 1887)**

**270.** The following Rules of Practice shall be observed in Courts of Small Causes-

- (1) The summons shall ordinarily be served on the defendant seven clear days before the day on which the Court shall be held at which the cause is to be tried, unless the Court shall otherwise order, but a summon may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.
- (2) The cause of action shall be transcribed from the plaint into the Small Cause Sheet [Form No. (R)9-A] and the substance of the cause of action shall be entered in the Register of Small Cause Court Suits [Form No. (R)8].
- (3) The substance of the evidence, the judgment, and the decree shall be entered in the Small Causes Book referred to above by the presiding Judge himself.

**Note-** In case of review or applications under Order 9, Rules 3, 9 and 13, the substance of evidence and judgment or order shall also be entered in the Small Causes Book. If necessary, separate foolscap sheets should be attached to the book.

- (4) In cases in which the defendant has moved the Court for a review of judgment, and the Court is of opinion that such review should be granted, a very early date of hearing shall be fixed not exceeding fifteen days and the case should be disposed of as expeditiously as possible.

**Note-** For rules regarding the maintenance, etc. of records of Small Cause Court, see Rule 2 *et seq.*

**2. The Administrator-General's Act, 1913 (III of 1913)**

**271.** Where a subject of a State dies in India and it appears that there is no one in India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of