Punjab and Haryana High Court Rules and Orders

Volume 1

Opening Note: Instructions issued by the High Court from time to time shall hold the field on any matter on which the High Court Rules and Orders are silent. Instructions hereinafter issued by the High Court on any subject whatsoever shall hold good.

(Practice and Procedure etc. in Civil Courts subordinate to the High Court)

Chapter 1

Practice in the trial of Civil Suits.

1. **Court/Office hours**

(i) All Civil Courts in the States of Punjab and Haryana and Union Territory Chandigarh shall sit from 10:00 a.m. to 4:00 p.m. with an interval for luncheon from 1:00 p.m. to 1:30 p.m. on all working days (excluding Sundays and other holidays declared by the High Court).

(ii) The working hours for offices attached to Civil Courts shall be from 9:45 a.m. to 5:00 p.m. with same luncheon break.

(iii) No new case should ordinarily be taken up after the closing hour of the Court but the hearing of the case taken up before that hour may, if necessary, be continued for a short time.

2. Holidays/Vacation:

(i) The holidays allowed to the Civil Courts are annually notified by the High Court under the provisions of Section 47 of the Punjab Courts Act, 1918. In addition to it, local holidays for two days in a year for each District are also allowed by the High Court on recommendation of concerned District and Sessions Judge.

(ii) Courts shall observe vacation for civil work for the month of June and for criminal work from 16th to 30th June.

(iii) Period of vacation to be observed by a Judicial Officer is governed by instructions issued by the High Court from time to time.

3. Taking up cases on holidays, leave days or during vacation.

(i) Ordinarily civil cases should not be taken up for hearing during vacation or on a holiday but with consent of parties or their counsel, a civil case may be heard during the vacation or on a holiday if the Presiding Officer of the Court thinks it expedient to do so.

(ii) An urgent Civil case (suit, appeal or application) may be entertained during vacation or in a spell of four or more consecutive holidays by the Judicial Officers to be deployed for this purpose by the District Judge concerned. Besides it, the District Judge or any Judicial Officer authorised by the District Judge may also entertain urgent civil case during the vacation or on any holiday.

(iii) If the day of hearing of any case is declared holiday, the case would be deemed to be adjourned to the next working day.

(iv) If Presiding Officer of any Court has to proceed on leave, the cases fixed for the leave day may be taken up in advance by the Presiding Officer and adjourned to suitable dates. Necessary entries in the software shall also be made by the Reader regarding status and next dates of hearing of the cases. However, if the Officer has to suddenly proceed on leave on any working day, the cases fixed in his Court shall be taken up by any other Court as per arrangement to be made by the concerned District Judge and if no such arrangement is possible, the cases shall be deemed to be adjourned to the next working day of the Presiding Officer.

4. **Attendance of ministerial establishment:**

Presiding Officer of a Court may order any official of his Court to attend office on a holiday to clear off arrears or for some other urgent work. However, generally, an official should not be made to attend on a holiday pertaining to his religion.

5. **Preparation of cause lists**:

Cause lists of cases fixed for each day should be prepared a day before. These lists should be available on the Internet and should be exhibited in the verandah of the Court room at least by the afternoon of the day preceding that to which they relate. The order of causes in the list should not ordinarily be departed without cogent reasons. Cases should as far as possible be so arranged in the cause lists that the litigants may not have to wait long for simple cases and petty work such as

miscellaneous applications, executions, objections, cases fixed for appearance or filing of written statements etc. and such cases should ordinarily be dealt with in the first instance and the cases fixed for evidence and arguments should be taken up thereafter. The cases to be given priority e.g. old cases, cases of senior citizens, time bound cases etc. be shown higher in the cause list in the cases of concerned stage. Daily cause list should be of manageable proportion and only such number of cases should be listed as can reasonably be expected to be dealt with in one day.

Cases for evidence and arguments and for other substantive purposes should ordinarily be fixed from Mondays to Fridays. However, such cases may also be fixed on Saturdays with consent of counsel for the parties. If argument or evidence in a case is commenced but not concluded on any working day immediately preceding Saturday, it may be continued by fixing the case on the following Saturday as well. Miscellaneous matters like executions, applications for review or for amendment of decree, cases under the Indian Succession Act, the Guardians and Wards Act etc. should ordinarily be fixed and heard on Saturdays only. However, if the Court considers that such miscellaneous matters cannot wait for hearing till Saturday, the Court may take up such matters on any other working day as well.

The Reader of the Court shall enter in software the progress and status of each case shown in the cause list and the next date of hearing, everyday after the order of the proceedings of the day is signed by the Presiding Officer.

Cause list should be prepared in the following form

IN THE COURT OF------

CAUSE LIST FOR (Day of the week and date)----

Serial No.	***No. and description of the case***	***Plaintiff/ Appellant or Petitioner***	***Defendant or Respondent***	***Names of Advocates***

The cases should be listed under the following heads in the sequence given below:-

- cases for appearance, written statement, reply etc.
- cases for replication/issues.
- cases for plaintiff's evidence
- cases for defendant's evidence.
- cases for consideration/arguments in miscellaneous applications.
- cases for rebuttal evidence/arguments.

- cases for pronouncement of judgment/order.

Chapter 2

Reception of plaints and applications.

1. Filing on all working days.

Plaints, applications etc. may be filed in the Civil Courts on every working day during Court hours.

2. Procedure for filing of fresh cases.

(i) There shall be a separate earmarked room known as Judicial Service Centre (JSC) or Niyayik Sewa Kendar for filing of fresh cases at every place where Judicial courts are located.

(ii) Check list of possible objections shall be displayed out-side JSC.

(iii) JSC shall remain open from 9.45 a.m. to 5.00 p.m. on every working day. Fresh cases may be filed there between 10.00 a.m. and 4.00 p.m. on any working day.

(iv) Cases instituted up to 2.00 p.m. shall be taken up by the concerned Court on the next working day whereas the cases filed after 2.00 p.m. may ordinarily be taken up on a working day after the next working day. However, in urgent matters, with permission of District Judge or Civil Judge (Senior Division), as the case may be, fresh case may also be taken up on the day of filing or on the next working day even if instituted after 2.00 p.m.

(v) All the new cases shall be presented by the party concerned or authorized representative/Advocate to the concerned official sitting in the JSC.

(vi) Filing of plaints, applications etc. by post is not permissible. All plaints/applications etc. of judicial nature received by post should be 'filed' with endorsement that it is being filed as not having been properly presented. This does not apply to applications to be dealt with on administrative side.

(vii) The concerned official in JSC, before entering the file in the Computer, shall scrutinize the file in order to ensure the following:-

(a) Complete addresses of all the parties in the case are given along with E-mail address, mobile telephone number or land-line fax telephone number (if available) of the parties and their advocates.

(b) Page marking of the paper-book along with index is there.

(c) If any documents are attached, list thereof has been annexed.

(d) Vakalatnama duly stamped and signed has been filed.

(e) Pleadings have been signed at proper places.

(f) There is certificate by the party or the advocate that there is no possible objection as per check list.

If any such deficiency is found, the official will return the file immediately to the advocate or the presenting person, pointing out the deficiency found and requiring him to rectify the same and to present the case thereafter.

(viii) Written statement, reply, replication, rejoinder, any kind of application or documents etc. in any pending case shall be presented in the Court concerned. Entry thereof shall be made by the Reader in the software as and when made available, as per procedure determined by the High Court.

3. **Procedure for Electronic Filing (e-filing) of cases**:

As and when necessary infrastructure and software are made available in the Courts, the High Court may by order permit e-filing of cases in the subordinate Courts as per the procedure determined.

4. **Procedure after filing of case**:

If concerned official in JSC is satisfied that the case filed is complete in all respects, he shall issue a receipt generated to the advocate or the party filing the case, after feeding the preliminary details of the case in the software e.g. name of first or sole plaintiff/petitioner and name of first or sole defendant/respondent, nature of case and the Court to which the case is being sent for hearing or allocation, etc.

5. Allocation of cases:

(i) If Court is earmarked for trial of any case e.g. cases under the Wakf Act, 1995, the case shall be sent directly to the concerned Court by the official in JSC.

(ii) Other cases shall be sent by concerned official of JSC to the District Judge or Civil Judge (Senior Division), as the case may be, for allocation. The work of allocation of cases should not be left to the Reader, the Clerk of Court or any other official. The Judge should attend to it personally. The date on which the case shall be listed in the concerned Court should also be mentioned. On allocation of cases, the files shall be sent to the concerned Courts after making entries in the software.

(iii) Allocation lists shall be displayed outside JSC/Court of District Judge/Civil Judge (Senior Division).

(iv) The concerned Court shall list the case for hearing in the Cause List. At the time of hearing, the Court shall order registration of the cases. Thereupon Ahlmad shall enter all necessary particulars of the case in Institution Register in Computer software.

(v) Print outs of entries in Institution Register in Computer software shall be taken out at the end of the day. After 150 print outs (sheets) are taken out, the print outs be got bound in the shape of register to be known as Institution Register. Separate Institution Registers shall be maintained for different categories of cases.

6. In-sufficiently stamped plaints etc.:

It shall be the duty of the Reader of concerned Court to see that appeals, plaints and petitions etc. are properly stamped. When they are in doubt what court fee is due on any document, it shall be their duty to refer the matter to the Presiding Officer for order. Reader is primarily responsible for any loss of revenue caused by in-sufficiently stamped documents having been received owing to his neglect. Such responsibility shall be enforced in case of obvious mistake and not in a case in which a genuine doubt was possible regarding the correctness of the Court Fee due.

7. Transfer of cases to equalise work:

The equal distribution of work amongst the Courts available can always be effected by the transfer of cases when necessary from one Court to another under the authority vested in the District Judge. However, ordinarily cases in which evidence has already been concluded and old cases in considerable number should not be transferred.

When a case is transferred by a judicial order, the Court passing the order should fix a date on which the parties should attend the Court to which the case is transferred.

8. **Reception by ministerial establishment prohibited:**

The members of the ministerial establishment are strictly forbidden to receive petitions, pleadings or documents etc. directly from lawyers and their clerks or from litigants except in JSC as provided hereinbefore. However, Talbanas (Process Fee) and postal envelopes should be received direct by the Ahlmad and a receipt in prescribed form given for the same whether demanded or not.

9. **Who can file plaints, petitions etc.**:

Plaints and petitions etc. must be filed, except when otherwise specially provided by any law for the time being in force, by the party in person or by his recognized Agent or by a duly authorized and qualified legal practitioner (Advocate).

10. **Power of Attorney**:

When parties appear through Advocates, or agents duly authorized in this behalf, their power of attorney should, when practicable, be filed in original with the plaint/written statement. Where the power of attorney is a general one, a copy should be filed, the original being presented for verification. When so filed, the power of attorney will be considered to be in force until revoked, with the leave of the Court, by a writing signed by the concerned party and filed in Court, or until the party or Advocate or agent dies or all proceedings in the lis are ended insofar as regards the said party.

11. **Check List of Objections**:

District and Sessions Judge

Objection Code	**Objection Type**
1.	Complete names, parentage and addresses of the parties.
2.	Not properly stamped.
3.	List of documents produced.
4.	Not properly valued.
5.	Vakalatnama filed or not.
6.	Not proper paging.
7.	E-mail, mobile, landline No.
8.	Not separate index
9.	Court fee not affixed on Documents/judgment/order etc.
10.	Pleadings duly signed or not.
11.	Parties name not mentioned as per copy of judgment/order of lower court.
12.	Not accompanied by judgment/order.
13.	Not accompanied by Decree.
14.	Minor or unsound mind person not properly sued.
15.	Parties not arrayed properly.

16. Number of copies of appeal/plaint/application not filed as number of defendants/respondents.

17. Age of parties not mentioned.

Notes: 1. Certificate required that all the formalities have been completed as listed in the check list of objections.

2. District & Sessions Judge may add any other possible objection in the check list as per local requirements.

Civil Judge

Objection Code Objection Type

1. Complete names, parentage and addresses of the parties.

2. Not properly stamped.

3. List of documents produced.

4. Not properly valued.

5. Vakalatnama filed or not

6. Not proper paging.

7. E-mail, mobile, landline No.

8. Not separate index.

9. Court fee not affixed on Documents/judgment/order etc.

10. Pleadings duly signed or not.

11. Minor or unsound mind person not properly sued.

12. Parties not arrayed properly.

13. Original documents not filed, when necessary.

14. List of reliance not filed.

15. Proper process fee not filed.

16. Address form not filed.

17. Number of copies of plaint/application not filed as number of defendants.

18. Age of parties not mentioned.

Notes: 1. Certificate required that all the formalities have been completed as listed in the check list of objections.

2. District & Sessions Judge may add any other possible objection in the check list as per local requirements.

Chapter 3- Examination of Plaint

1. **Examination:**

(a) Provisions of Orders VI and VII of the Code relating to pleadings/plaint may be studied carefully and kept in view while examining the plaint.

(b) On the presentation or receipt of a plaint, the Court should examine it with special reference to the following points, *viz.*:—

(i) Whether the plaint contains the particulars specified in Order VII, Rule 1, and conforms to the other rules of pleadings in Orders VI and VII and rules made by the High Court;

(ii)Whether there is, *prima facie,* any non-joinder or mis-joinder of parties, or mis-joinder of causes of action;

(iii) Whether any of the parties to the suit are minors or persons of unsound mind and, if so, whether they are properly represented.

(iv) Whether the plaint is duly signed and verified and is accompanied by an affidavit in support of the pleadings by the person(s) verifying the plaint;

(v) Whether the suit is within the jurisdiction of the Court or must be returned for presentation to proper Court (Order VII, Rule 10);

(vi) Whether the plaint is liable to be rejected for any of the reasons given in Order VII, Rule 11;

(vii) Whether the documents attached to the plaint (if any) are in order;

(viii) Whether it contains statement to the effect that no suit between the same parties or between the parties under whom they or any of them claim, litigating on the same ground, is pending or has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and, if any such suit was previously instituted/decided or is pending, all particulars thereof.

(ix) Whether the relief claimed has been stated specifically and whether the same is being claimed either simply or in alternative (Order VII Rule 7).

(x) Whether the plaintiff seeks relief in respect of the several distinct claims or causes of action founded upon separate and distinct grounds, and whether those have been stated separately and distinctly(Order VII Rule 8).

2. Necessary Parties:

Provisions of Orders I and II of the Code relating to non-joinder and mis-joinder of parties and causes of action may be studied. Suits for inheritance, partition or declaration of right in order to effect a partition, contribution, redemption, foreclosure, administration of property, dissolution and winding up of a partnership, and the like, cannot be properly disposed of unless all persons interested in the matter are before the Court. Therefore, in cases of this description, if it appears that any necessary parties have not been joined, the plaintiff should be ordered to join them.

3. **Signing and verification**:

The plaint must be signed by the plaintiff, or, if by reason of absence or other good cause, the plaintiff is unable to sign it, by his duly authorized agent. It must also be signed by the plaintiff's Advocate (if any) and be verified by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

The personal attendance of the plaintiff in Court for the purpose of verification is not necessary. The verification must, however, be signed by the person making it.

4. Jurisdiction

The jurisdiction of a Court depends upon the nature and value of the suit. If a suit is not within the jurisdiction of the Court, the plaint must be returned in the presence of the Presiding Officer for presentation to proper Court. In such cases, the Presiding Officer must record on the plaint his reasons for returning it along with the other particulars mentioned in sub-rule (2) of Rule 10 of Order VII.

5. Rejection of plaint:

In circumstances mentioned in Order VII Rule 11, the plaint should be rejected by the Presiding Officer by recording reasons in support of the order. Correct order in such cases is to 'reject the plaint' and not to 'dismiss the suit'. The rejection of a plaint may not preclude the institution of a fresh suit on the same cause of action provided of course, it is not otherwise barred (i.e. by limitation etc.) by that time.

6. Land suits.

Every plaint relating to agricultural land shall contain the particulars relating to the land recorded in the last Jamabandi and shall be accompanied by certified copy of the

said Jamabandi. Where by reason of partition, river action or other cause, the entries in the record of consolidation of holdings and in the last Jamabandi do not accord, a brief explanation of the reason should be given in the plaint. Where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map, preferably drawn to scale, showing clearly the specific plot claimed and so much of the fields adjoining it as may be sufficient to facilitate identification. The specific plot and adjoining fields shall be numbered in accordance with the record of last Jamabandi. Where, however, the suit is for the whole of one or more khasra or killa numbers as shown in the map prepared at the time of consolidation of holdings, or a share in such numbers, and not for a specific portion thereof, no map will be required unless it is necessary for other reasons to show the boundaries of such khasra or killa numbers.

7. Suit for recovery of money, mesne profits and accounts:

If the plaintiff seeks the recovery of money, the plaint should state the precise amount, as far as the case admits. In a suit for mesne profits or unsettled accounts, it is sufficient to state the amount approximately.

8**. Information of date of hearing by SMS/e-mail**.

If mobile telephone number/e-mail address of any party/counsel has been furnished in any case, then information of every next date of hearing fixed in the case may be given to that party/counsel by SMS/e-mail, if necessary facility is available in the Court.

Chapter 4

Service of Processes

1. Summons to the defendant

(i) Except in suit heard by a Court of Small Causes, ordinarily the summons to the defendant shall be issued for settlement of issues only because an ordinary suit is not likely to be disposed of on the first date of hearing fixed for appearance of defendant. However, when the summons is for final disposal, the parties should be made to understand that all their evidence must be produced on the date fixed for disposal, but the Court is not bound to dispose of the case on the date fixed for hearing and may adjourn the case for further proceedings.

(ii) The form of summons for the final disposal of a suit should be printed on coloured paper to distinguish it from the form of summons for settlement of issues. Such summons shall be assigned serial number and proper record of the movement of the summons shall be maintained from the time of its issuance till it is received back by the Court.

(iii) It should be mentioned in the summons for settlement of issues that the defendant is required to file the written statement of his defence, if any, within 30 days from the date of service of summons.

2. Summons to be signed and sealed:

Summons should be clearly and legibly written. It may be signed by the Presiding Officer. Superintendent/Clerk of Court/ Reader is also authorised to sign the summons instead of the Presiding Officer. The signatures should be fully and legibly written. The seal of the Court must be affixed. Copy of the plaint should be attached to each summons.

3. General provisions regarding services of summons:

(i) The provisions regarding the service of summons on the parties, contained in Sections 27, 28, 29 and 143, Order III, Rules 3, 5 and 6, Order V, Rules 9 to 30, Order VI, Rule 14-A, Order XXVII, Rule 4, Order XXVIII, Rule 3, Order XXIX, Rule 2, Order XXX, Rule 3, Order XLI, Rule 14 and Order XLVIII, Rules 1, 2 and 3 of the Civil Procedure Code as amended by the High Court, should be strictly observed, as neglect of them may often render the service ineffectual, especially when personal service cannot be made.

(ii) Summons for service on persons residing within the limits of cantonments should not be sent to Executive Officers of cantonments.

(iii) During trial, processes may be served on the Advocate, if any, representing the concerned party. Processes may also be served on the address given in the address form by the concerned party, known as registered address. Such service is taken to be effective service.

(iv) Processes by post should ordinarily be sent by registered post acknowledgment due.

4. Mode of Service:

(i) Service by affixation not to be made before the date fixed for scrutiny of service:

Every attempt should be made to effect personal service in the first instance and failing that, service on an agent or a member of the family. The process-server should go again and again for this purpose, if there is time before the date fixed for scrutiny of service, and obtain for each successive attempt at service, attestations of witnesses different from those who have attested reports of previous attempt (s). In other words, service in any of the ways enumerated in Order V, Rules 12 to 16 of the Code of Civil Procedure, should be insisted upon and service by affixation as provided in Order V, Rule 17. Civil Procedure Code should not be allowed till after the day fixed for scrutiny.

(ii) Other modes of service:-

(a) Defendant/respondent should also be served by electronic mail service, fax and SMS at the same time, if the email address, landline fax telephone number and mobile telephone number of the defendant/ respondent are given.

(b) The High Court will approve three or four courier service operators and shall communicate the approved list to all the District Judges in the States of Punjab and Haryana and U.T. Chandigarh.

(c) It is advisable to resort to all the methods of service at the same time to ensure the service on the defendant or respondent, as the case may be, on first possible date.

(iii) Other Provisions regarding Service:

(a) Summons should be generated by the Computer.

(b) If a Government Department is defendant or respondent, then service can be effected by registered post and by process server as per the procedure applicable.

(c)Dasti summons should also be given if prayed for by a party.

(iv) Substituted service.

Before ordering substituted service of summons, the plaintiff should be required to make best endeavours to discover the defendant's address and to satisfy the Court that he has done so and that the defendant is evading service or that, for any other sufficient reason, cannot be served in the ordinary way. It is only after all the other prescribed methods for effecting service have been tried and have failed that it is open to the Court to order substituted service.

(v) **Publication in newspaper**:

The discretionary power alluded to above is frequently exercised by Courts by publication in one or more newspapers of a notice calling upon the defendant to appear. But in many cases, this method is quite unsuitable. When for example, the defendant is illiterate or belongs to a class which cannot be expected to read newspapers, such notice is obviously useless. In the case of educated persons likely to read newspapers, it may be proper to resort to this method, but even in such cases, the practice should only be adopted as a last resort.

(vi) **Publication allowed in approved paper only:**

Whenever notice is to be published in a newspaper, it should be published in newspaper approved by the High Court. A list of approved newspapers is circulated to sub-ordinate Courts periodically.

(vii) **Selection of paper to be made by the Presiding Officer:**

The object of effecting substituted service by advertisement in a newspaper is to inform the defendant that proceedings are pending against him and that he should appear in

Court. This object can only be achieved by publication in a newspaper of wide circulation, which is likely to be read by the defendant or the class to which he belongs. The selection of newspaper in which it is proposed to advertise should, therefore, be made by the Presiding Officer himself and not by a clerk of his office.

(viii) **Preference to vernacular papers printed in the district of the person to be notified:**

Care should also be taken that such notices are published as far as possible in vernacular papers, vernacular being the language of the subordinate Courts. They should only be published in papers printed in English if there is good reason to suppose that the persons concerned read English papers and are more likely to be reached in that way. Preference should be given to such papers as are printed in the District where the person notified resides; or if no newspaper is printed in that District, to those printed in the District nearest to it, provided such papers have a good circulation and are likely to be read by the defendant or the class to which he belongs.

(ix) **Duties of Manager of newspaper:-**

In sending a judicial notice for publication in a newspaper, the Court should, in the covering letter, require the manager of the newspaper to publish the notice at least a week before the date of hearing and to send an intimation immediately after publication of notice to the Court and to send, under postal certificate, the copy of paper containing the notice of the party for whose perusal it is intended at the address given in the notice, marking the notice in question with red ink. He should also be required, as proof of compliance with this order, to attach the postal certificate to his bill when submitting the bill to the Court for payment.

(x) **Covering letter to be sent to the Manager of the Selected Newspaper:**

This covering letter for sending the notice for publication should be sent to the Manager of the selected newspaper who will arrange for the publication of the Court Notice in the newspaper. The bill for the publication should be sent by Manager direct to the Court concerned for payment. The Court shall pay the amount after checking the correctness of the Court Notice published by the newspaper and the publication charges. The Court may, in an appropriate case, make advance payment of the publication charges.

(xi)**Advertisements in papers not on the approved list:**

If it is proposed for any special reasons to advertise in any paper, not on the approved list whether published in the concerned State or elsewhere, a reference should first be made to the High Court to ascertain whether there is any objection to the course proposed.

5. Service of witness

Rules relating to service of defendant/respondent shall as far as possible apply mutatis mutandis to service of witness.

6. Service of Processes of Appellate Courts.

(a) It not infrequently happens that processes of Appellate Courts sent to districts for service on respondents are returned with a note to the effect that the respondent has left or is not residing in the district, and the hearing of the appeal has, therefore, to be postponed. In view of Rule 38 of Order XLI added by this High Court, service of the notice of appeal and other processes shall issue to the registered addresses filed by the parties under Order VI Rule 14-A and service effected at such addresses shall be as effective as personal service. Attention is also drawn to Order V, Rule 23 of the Code of Civil Procedure, which places the Court called upon to serve the process of another Court in the same position as if it had issued it. The provisions of the Code on this point should be carefully attended to.

(b) It shall be in the discretion of the appellate Court to dispense with the service of a notice on any respondent or his legal representative when the respondent did not appear at the hearing in Lower Court.

(c)In the case of summonses from the High Court, the Court serving the summons shall record the statement of the peon as to such service on solemn affirmation, and shall verify the same with its signature before returning the summons.

7. Personal attention to service:

(i) It has been found by experience that delays in the disposal of civil suits are very often due to the failure of Presiding Officers to pay personal attention to matters connected with the issue and service of processes. The following instructions must, therefore, be strictly observed in future.

(ii) Between the date of the issue of process and the date of hearing, Presiding Officers of Court must personally satisfy themselves that service is being effectually carried out and not content themselves with looking into the matter only on the date of hearing.

(iii)In order to achieve this object, the following procedure shall ordinarily be observed in respect of service of all processes for attendance of parties or their witnesses:

(a) A very near date shall be fixed for the giving of adequate details of the persons to be served. On this date, the Judge shall satisfy himself that the diet money, etc. have been paid and that the name, address and the particulars of the person to be summoned are reasonably sufficient to secure service. If these conditions have been satisfied, process shall be then issued and two dates shall be fixed. The first date shall be for the return of the process with a report of the

process-serving agency, and the other for the hearing of the case. The interval between the date of return and the date of hearing shall in each case leave adequate time for the service of the process. It is not to be left to the discretion of the process-server to decide whether he shall effect personal or substituted service.

(b) The date of the return should be clearly written on the summons and the Nazir should ensure to return the process before the said date.

Note:- If the interval between the date of return and hearing is sufficient, a second date for return may be fixed.

(c)Parties should be invited and encouraged to attend in person or by Advocate on the date fixed for return of the summons. Whether they do so attend or not, the Presiding Officer should scrutinize the record and pass any order which may be required, such as an order for the issue of a fresh process. Parties should be encouraged throughout to take dasti summons to accompany the process-servers and to render all assistance in their power.

(d) In deciding whether to give a further adjournment when a process is not served, the Presiding Officer will be justified in taking into consideration whether the party asking for an adjournment had complied with the orders of the Court in paying process fees, diet money, etc., and in giving correctly and promptly the names and addresses of the persons to be served.

(e) A form of affidavit of the process-server which should accompany the return of the summons has been prescribed by the High Court. Before passing an ex parte order, the Court should make it a point to see that this affidavit duly filled in, is with the report of the process-server.

8 Proof of Service:

(i) No Court can rightly proceed to hear a suit ex parte until it has been proved to the satisfaction of such Court that the summons to a defendant to appear has been duly served, that is, has been served strictly in such manner as the law provides.

(ii)The nature of proof of service which the Court ought to require in each case should be according to the relevant provisions of the Code of Civil Procedure, particularly Rules 12 to 15, 17, 19 and 20 of Order V and Rules 2, 5 and 6 of Order III and Rule 3 of Order XXX of the Code of Civil Procedure. Proof of service as per requirements of the said provisions is imperative. If the service has been effected by e-mail, Fax or SMS, there should be proper documentary proof of such service.

9. Service of summons on public officers etc:

(1) In regard to the service of summons upon the party or witness who is a public officer (not belonging to the Indian Military, Naval or Air Forces) or is the servant of a local authority, it is open to the Court as provided under Order V, Rule 27 of the Code of Civil Procedure to serve the summons through the head of the office in which the said party or witness is employed if this course is considered more convenient. Ordinarily the summons should be served on the defendant or witness in the ordinary way and a copy sent to the head of the office or department.

Note:- In the case of employees of the Northern Railway, a copy of the summons should be addressed to the Divisional Superintendent or other Superior Officer concerned according to the list available on the High Court website under the head 'Rules and Orders', sub head 'Volume I Chapter 4 Rule 9'.

(ii)The method of effecting service through the head of the office will probably be found the most convenient in the case of defendants or witnesses employed in large administrative offices. In all cases where the summons is ordered to be served through the head of the office, an endorsement should be attached to or written in the body of the summons, conspicuously in red ink, quoting the exact words of sub-rules (1) and (2) of Rule 29, Order V, Civil Procedure Code, which (in the case of witnesses read with Order XVI, Rule 8 Civil Procedure Code) imposes a duty on the head of the office to serve the summons on the subordinate to whom it relates if possible and to return it under his signature with the written acknowledgment of the defendant or witness; or if service is not possible, to return the summons to the Court with a full statement of the reasons for non-service.

Note:- In the case of Patwaris, summons may be forwarded to the Tehsildar for service.

(iii) A reasonable time should be allowed for the attendance of the person summoned, in order that his official superior may be able to make suitable arrangements for the conduct of his duties during his absence.

10. Service of summons on employees in the Army, Navy and Air Force

(i) Order V, Rules 28 and 29 of the Code of Civil Procedure, provide for the service of processes on soldiers, sailors or airmen other than commissioned officers. Such process should invariably be transmitted for service to the proper military authority.

(ii) There is no special provision in the Code for the service of processes on officers as distinct from soldiers; and such processes should also ordinarily be

sent to the commanding officer of the officer concerned for service in the manner indicated in Order V, Rules 28 and 29.

(iii) In fixing dates for the attendance of persons in the Army, Navy or Air Force, the Courts should be careful to allow sufficient time. It should be remembered that in fixing a date of the appearance of the defendant in such cases, the time necessary for the transmission of the summons, through the usual channels, for service on the defendant must be taken into consideration, as well as the time which the defendant may, after service, reasonably require to make arrangements for obtaining leave and appearing in person or for appointing and giving instructions to an agent to represent him in the case

(iv) On the day fixed for hearing, if it appears that from any cause, the summons was not served in sufficient time to enable the defendant to make the necessary arrangements for appearing in person, or by agent, a fresh date must be fixed and notice given to the defendant, but this will seldom be necessary if Courts are careful in the first instance to allow sufficient time, as required by Order V, Rule 6, of the Code of Civil Procedure, and explained in the above remarks.

(v) It may be noted that when an officer, soldier, sailor or airman has authorised any person under order XXVIII, Rule I, to sue or defend instead of him processes may be served on such agent or upon any pleader appointed by such agent. (Order XXVIII, Rule 3).

11. Service of summons outside the jurisdiction of the Court issuing it:

(i)When the person to be served resides within the jurisdiction of another Court, the Judge must decide how service is to be effected, and pass orders accordingly. If the process has to be served within the jurisdiction of another Court but within the same district, the agencies located at tehsils will be employed, the processes being transmitted by post from one agency to another. If the process has to be served in another district, but within the State or Union Territory, it should be transmitted by post to the Civil Judge (Senior Division) for service and return. But no Court should refuse to serve any process received for service within its jurisdiction from a Court in another district or State or Union Territory merely by reason of the process not having been sent through the Civil Judge (Senior Division). Processes issued to districts in other States or Union territories. Should be forwarded for execution/service to the District Judge of the district in which service of such process is desired, except where they are to be served within Kolkata, Chennai or Mumbai (Order V,

Rule 22, Civil Procedure Code), when they should be transmitted for service to the Judge of the Court of Small Causes.

(ii) In issuing processes for service in other States or Union Territories, the Presiding Officer of the Court issuing the process should personally satisfy himself that such full particulars of the description of the person summoned are entered in the process as will render it unlikely that the serving officer should mistake the identity of the person summoned. The name, occupation and address should be recorded in the summons, together with any further particulars which, in the opinion of the Court, will facilitate service of the process. The issue of the process should be delayed until such particulars are satisfactorily furnished by the person applying therefor. The same care should be taken in regarding to all processes which are to be served outside the jurisdiction of the Court issuing the process.

(iii) All processes should set forth distinctly both the Court from which the process issues and the name of the district. They should bear the seal of the Court and should be signed legibly.

(iv) All processes sent for service to any district, the vernacular of which differs from that in which the process is written, should be in duplicate and accompanied by a translation in English.

All reports made on processes received for service from any district or State or Union Territory the vernacular of which differs from that of the district in which the report is written, shall be translated into English which translation shall accompany the process when returned to the Court issuing it.

(v) In every case in which application is made for the issue of a process to a place in India, but beyond the limits of the jurisdiction of the Court, the stamp requisite for the issue of such process, under the rules in force in the State of Punjab or Haryana or Union Territory, Chandigarh, as the case may be, will be levied and affixed to the diary of process fees; and a note will be made on the process to the effect that the proper fee has been paid. A process issued by any Court in the States of Punjab and Haryana and Union Territory Chandigarh will be served or executed free of charge in any other part of India, if it be certified on the process that the proper fee has been levied under the rules in force in the State of Punjab or Haryana or Union Territory, Chandigarh, as the case may be.

(vi) Processes issued by any Court in India will be served free of charge by the Courts in the States of Punjab and Haryana and Union Territory, Chandigarh

under the same conditions as are mentioned in the preceding paragraph, i.e., if it be certified on the process that the proper fee has been levied under the rules in force in that state or territory.

(vii) All correspondence between Judicial Officers in the States of Punjab and Haryana and Union Territory, Chandigarh and the Courts in other States should be conducted in English language.

(viii) Complaints are frequently received that the processes sent for service to other district are not properly attended to. All processes received from other district should be shown regularly in the prescribed register and the disposal of the processes should be watched by the Presiding Officer of the Court from time to time.

(ix) If a summons is issued under the provision of Order V, Rule 21, of the Code of Civil Procedure, it is the duty of the Court serving the summons.

(a) to proceed as if it had been issued by such Court;

(b) to return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto; and

(c) to make the declaration referred to in Order V, Rule 19.

(x) Summons for service in territories in India to which the Code does not extend may also be sent for service in another State to such Court as may be prescribed by rules in force in that State. Provisions of Section 28 of the Code apply to service in such territories in view of the definition of 'State' contained in Section 3(58) and (41) of the General Clauses Act, 1897 (X of 1897). (Government of India letter No. F-80(49)/55-G), dated the 29th February, 1956).

12. Service of summons abroad:

(i) Where the defendant/respondent resides in a Country which is signatory to or has acceded to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 1965, (In short, the Hague Convention, 1965), the summons and the letter of request, in duplicate, should be remitted to the Central Authority of the addressed Country for service. The summons, if not in English, must be accompanied by a true copy of translation in English or in the language of the addressed Country.

Note:- The detailed information regarding signatories to this Convention and the Central Authorities declared by the Signatory States can be accessed at website www.

hcch.net or at High Court website under the head 'Rules and Orders', subhead Volume I Chapter 4 Rule 12.

(ii) The addressed Country should be asked, in the letter of request, to send back the summons, after due service as per the internal law of that Country, along with a certificate stating that the summons has been served, the method, the place and the date of service and the person to whom the summons was delivered. If the summons is not served, the certificate shall set out the reasons which have prevented service. In either event, if such certificate is not completed by the Central Authority or by a judicial authority, it must be counter signed by one of these authorities. If certificate has been received stating that the summons has been served, the Court shall presume that the summons has been duly served upon the defendant/respondent.

(iii) If the summons is not received back served or unserved within 6 months from the date of despatch of the letter of request, the Court may presume the summons to have been served on the defendant/respondent.

(iv) The Court shall also have the power to send the summons for service:

(a) directly to the defendant/respondent through postal channels;

(b) directly to the Judicial Officers, officials or other competent persons of the Country of destination;

(c) to the diplomatic or consular agent where the defendant/ respondent is of Indian origin and also in other cases where the Country of destination is not opposed to such service;

(d) to the Officer, if any, of the foreign country specified by the Central Government under Order V, Rule 26-A of the Code;

(e) give the summons and letter of request dasti to the plaintiff on request, for effecting service directly through the Judicial Officers, officials or other competent persons of the Country of destination.

(v) Where the defendant/respondent resides in a country which is not signatory to or has not acceded to the Hague Convention, 1965 and has no agent in India empowered to accept the service, the summons shall be sent to the Officer, if any, of that country specified by the Central Government under Order V, Rule 26-A of the Code and also forwarded by registered post acknowledgment due, if there is postal communication with the said place.

The summons should be sent in properly and fully addressed and prepaid envelope. A copy of the address should also be kept on the judicial record. Certificate/receipt given by the postal authority should also contain the full address.

If service by post is not possible, the mode of service, if any available under Order V, Rule 26 or Rule 26-A, may be resorted to. If still service is not effected, substituted service under Order V rule 20 of the Code may be ordered.

13. Special provisions regarding service in some particular foreign countries: Without prejudice to the generality of Rule 12, following special provisions are made regarding some foreign countries:

(i)**Afghanistan**: Summons to defendant in Afghanistan can be served by post and not through any agency. Courts should in no case address Afghanistan Courts or officials or the authorities in Kabul directly. Violation of these instructions may cause much embarrassment to the Government of India. Breaches of these instructions will not be treated with leniency, even though result of mere carelessness.

(ii) **United States of America**: Service in this country is normally done by appointing a local lawyer acting as agent for the parties. Where desired, Indian Consular Officer will recommend suitable firm of local lawyers.

(iii) Pakistan and Bangladesh: Provisos to Order V, Rule 25 of the Code of Civil Procedure lay down special procedure for service of summons on defendant who is residing in Pakistan or Bangladesh by sending the same to any Court in that country (not being High Court) having jurisdiction in the place where the defendant resides and in the case of the defendant being a Public Officer (not belonging to Military, Naval or Air Forces) or a servant of a Railway Company or local authority, by sending the summons to such Officer or Authority in that country as the Central Government may specify.

Under second proviso to Order V Rule 25 of the Code of Civil Procedure, the Central Government has issued the following notification:-

S.R.O. 1342, dated Ist September, 1951 – In pursuance of the second proviso to Rule 25 of Order V in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), the Central Government hereby specifies the following officers in Pakistan to whom summons may be sent for service on defendant who is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces) 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 in 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.

14. **Service of summons received from Abroad:**

(i) Summons issued by Civil or Revenue Courts from any Country which is signatory to or has acceded to the Hague Convention, 1965 may be served as if the same were issued by the Court receiving the said summons and the summons be returned with certificate of service or non-service containing particulars mentioned in Rule 12 (ii) and duly counter signed by the Judicial Officer.

(ii) Summons issued by Civil or Revenue Courts from any other foreign country may also be served as if issued by the Court receiving the same. In this regard, the provisions of Section 29 of the Code have been made applicable to the following countries.

Serial No.	***Name of country***	***Number and date of notification***	***Courts in respect of which notification has been issued.***
1	Singapore	S.R.O. 1233, dated 29th May, 1956	All Civil Courts
2	Ceylon (now Sri Lanka)	No. 247, dated 16.2.1909	Ditto
3	France	No. 852-C, dated 3.2.1913	Civil Courts
4	Spain	No. 852-C, dated 3.2.1913	Ditto
5	Belgium	No. 852-C, dated 3.2.1913	Ditto
6	Russia	No. 852-C, dated 3.2.1913	Ditto
7	Portugal	No. 852-C, dated 3.2.1913	Ditto
8	Iraq	No. F.209-23, dated 6.6.1923	Civil and Revenue Courts
9	Kenya	No. F.811-23, dated 4.6.1924	Civil Courts
10	Egypt	No. 369, dated 31.5.1938	Mixed Courts

Serial No.	***Name of country***	***Number and date of notification***	***Courts in respect of which notification has been issued.***
11	Japan	No. 1924, dated 25.11.1920	Civil Courts
12	Sweden	No. F. 12/17/35, dated 20.1.1936	Ditto
13	Persia (now Iran)	No. F.840/25, dated 3.5.1928	Ditto
14	Nepal	No. F. 576/24, dated 15.8.1925	Courts specified in the Schedule to the notification
15	Pakistan (now Bangladesh also)	No. S.R.O. 1340, dated 1.9.1951	Civil and Revenue Courts
16	Federation of Malaya (now Malaysia)	No. S.R.O. 223, dated 24.1.1956	All Civil Courts

15. Cost of postage and registration of processes forwarded by post:

(i)Postal charges on all processes, notices, and other such documents, issued from any Court and transmitted by post, are to be paid by means of service postage stamps, without any additional charge being levied from the parties at whose instance the process or document is issued. In cases in which it is considered necessary to register the cover, the fee for registering it will also be paid by means of service postage stamps.

(ii) However, for service of summons on defendant/respondent, the plaintiff/petitioner will be required to pay all postal charges for postage and registration. When the party concerned furnishes stamped postal envelope, Ahlmad should give him the receipt for the same.

(iii) Processes received for service from Courts in other States should be returned in service postage paid covers, the stamps being provided by the returning Court. Similarly, processes returned to Courts in Punjab, Haryana and U.T. Chandigarh from Courts in other States will be sent in service postage paid covers. The same rule, of course, applies to processes returned by or to other Courts in the same State. Service postage labels required for this purpose will be obtained in the usual way.

16. Assistance by Village Officers in Process-serving

(i) The Financial Commissioner has invited the attention of all the Collectors to the necessity of impressing upon the Lambardars that as one of their duties under Rule 20 of the Land Revenue Rules, is to assist all officers of the Government in the execution of their public duties, they are expected to assist the process-servers in serving process in Civil and Criminal cases and that the more care they devote to this branch of the administration, the more expeditiously will the suits be decided. It was further pointed out that it was obviously to the benefit of the village that the Lambardar should do his best to assist in the service of the processes. Subordinate Courts should bring to the notice of the Collectors any case of wilful negligence of duty in this direction on the part of Lambardars and should not hesitate to move the High Court through the proper channel if matters do not improve even then.

(ii) In order to reduce the possibility of false reports being made on notices of sale, which are not uncommon, it has been decided that the process-server's report on a notice of sale should ordinarily be attested by a Lambardar, Sarpanch or Member Panchayat. The absence of attestation by a Lambardar, Sarpanch or Member Panchayat should not necessarily be regarded as proof that the process-server’s report is false.

17 Filling up of summons by a party:

(i)A party may if it so desires file printed forms of summons duly filled up in accordance with the rules, leaving the date of appearance and the date of the summons blank.

(ii) The party or its Advocate shall sign such summons in the left bottom corner and will be responsible for the accuracy of the information entered in the summons.

(iii) The summons must be filled up in bold, clear and easily legible hand-writing.

(iv) Date of appearance and date of summons shall be filled in by the Ahlmad while issuing the summons.

(v) Necessary number of printed forms of summons will be supplied to such party free of cost.

Chapter 5

Written Statements and Replications

1. Period for filing written statement

Order VIII Rule 1 of the Code stipulates that a defendant shall within 30 days from the date of service of summons on him present a written statement of his defence. For reasons to be recorded by the Court, the aforesaid period of 30 days can be extended to maximum of 90 days from the date of service of summons. However, this provision has been held to be directory and not mandatory. Extreme harsh order of striking off the defence of defendant due to non-filing of written statement within the stipulated period should be the last resort, but at the same time, the period for filing written statement should not be extended lightly or in routine.

2. Documents to accompany written statement

The defendant along with written statement has to produce all documents in his possession or power on which he bases his defence or claim to set off or counter-claim, along with list of such documents. Copy of written statement for being supplied to the plaintiff shall also be furnished. List of other documents relied upon by the defendant but not in his possession or power shall also be filed. Statement indicating his address for service shall also accompany the written statement.

3. Separate Written Statements

If several defendants in a suit have identical defence, they may file a joint written statement or separate written statement by each defendant. However, if their defences are not identical, they shall file separate written statements.

4. **Replication**

The Court may call upon the plaintiff to file replication to the written statement of the defendant. The Court may also require the parties to file additional written statement/replication fixing time of not more than 30 days for presenting the same. This power should be used when necessary for elucidating the pleas, especially in complicated cases. In simple cases, however, examination of the parties, after filing of written statement, is generally sufficient.

5. **Court Fees on set off/counter-claim**

When the defendant in his written statement claims any sum by way of set off in a suit for recovery of money or makes counter-claim in any suit, the written statement qua the same must be stamped in the same manner as a plaint.

Chapter 6

Framing of issues

1. **Out of Court Settlement**.

In view of Section 89 and Order X, Rule 1-A of the Code of Civil Procedure and Section 20 of the Legal Services Authorities Act, 1987, Court should explore possibility of settlement or compromise between the parties by adopting any of the modes specified in Section 89(1) of the Code.

2. **Stress on framing correct issues.**

Framing of correct issues is very important for proper trial of the suit. It is duty of the Court to frame all issues arising out of the pleadings correctly. Presiding Officer should go through the pleadings carefully while framing issues.

Issues are material propositions of facts and law which are in controversy between the parties and the correct decision of a suit depends on the correct determination of these propositions. Some time spent by the Court at the outset in studying and elucidating the pleadings, may mean a saving of several days in the later stages of the trial. The object of framing issues is to pin-point the points required to be determined by the Court.

3. Framing of issues by counsel illegal

In some Courts, the framing of issues is left to the counsel for the parties concerned. This practice is illegal and must cease. The Code contemplates that the Presiding Officer of the Court should himself examine the pleadings, get the points in dispute elucidated and frame issues thereon.

4. **Elucidation of pleadings for framing issues**

The main foundation for the issues is supplied by the pleadings of the parties, *viz.,* the plaint and the written statement. But owing to the ignorance of the parties or other reasons, it is frequently found that the facts are stated neither correctly nor clearly in the pleadings. The Code gives ample powers to the Court to elucidate the pleadings by different methods prescribed in Orders X, XI and XII of the Code and in most cases, it is essential to do so, before framing the issues.

On the date fixed for the settlement of issues, the Court should, therefore, carefully examine the pleadings of the parties and see whether allegations of fact made by each party are either admitted or denied by the opposite party, as they ought to be. If any allegations of fact are not so admitted or denied in the pleadings of any party, either expressly or by clear implication, the Court should proceed to question the party or his Advocate and record categorically his admission or denial of those allegations (Order X, Rule 1).

5. **Examination of Parties**

Order X, Rule 2, of the Code, empowers the Court at the first or any subsequent hearing to examine any party appearing in person or present in Court or any person, accompanying him, who is able to answer all material questions relating to the suit. This is most valuable provision, and if properly used, results frequently in saving a lot of time. To use it properly, the Court should begin by studying the pleas and recording the admissions and denials of the parties under Order X, Rule 1, as stated above. The Court will then be in a position to ascertain what facts, if any, need further elucidation by examination of the parties. The parties should then be examined alternatively on all such points and the process of examination continued until all the matters in conflict and especially matters of fact are clearly brought to a focus. When there are more defendants than one, they should be examined separately so as to avoid any confusion between their respective defences, unless their defence is identical.

6. Examination on oath.

From Order XIV, Rule 3, of the Code, it will appear that every allegation of fact made by any person other than an Advocate should be on oath or solemn affirmation.

7. **Personal attendance of parties.**

When a counsel for a party or his agent is unable to state the facts to the satisfaction of the Court, the Court has the power to require the personal attendance of the party concerned (Order X, Rule 4 Civil Procedure Code). It may also be noted here that the Court

can require the personal attendance of the defendant on the date fixed for the framing of issues by an order to that effect in the summons issued to him. (Order V, Rule 3).

8. **Examination should be detailed.**

In examining the parties or their Advocates, the Court should insist on a detailed and accurate statement of facts. A brief or vague oral plea, e. g., that the suit is barred by limitation or by the rule of *res-judicata,* should not be received without a full statement of the material facts and the provision of law on which the plea is based. Similarly when fraud, collusion, custom, misjoinder, estoppel, etc., is pleaded, the facts on which the pleas are based should be fully elucidated. Any inclination of a party or his Advocate to evade straightforward answers or make objections or pleas, which appear to the Court to be frivolous, can be promptly met, when necessary, by an order for a further written statement on payment of costs. The party concerned should also be warned that he will be liable to pay the costs of the opposite party, on that part of the case at any rate, if he failed to substantiate his allegations.

9. **Personal examination of parties.**

Examination of the parties in person is particularly useful in the case of illiterate litigants. Much hardship to the people will be prevented, if the Presiding Officers examine the parties personally and sift the cases thoroughly at the outset.

10. Amendment of pleadings.

The examination of the parties frequently discloses that the pleadings in the plaint or written statement are not correctly stated. In such cases, these should be ordered to be amended and the amendment initialed by the party concerned. If any mis-joinder or multifariousness is discovered, the Court should take action to have the defect removed.

11. **Discovery and inspection etc.**

(i) The provisions of Orders XI and XII of the Code with regard to 'discovery and inspection' and 'admissions' are very important for ascertaining precisely the cases of the parties and narrowing down the field of controversy. A proper use of these provisions should save expense and time of the parties and shorten the duration of the trial. The parties should be warned that if they fail to avail themselves of these provisions, they will not be allowed costs of proving facts and documents, notice of which could have been given. When hearing evidence, the Court should make a note whether the parties have made use of these provisions, and if they have not done so, should ordinarily disallow costs incurred in proving such facts and documents in passing final orders. As these provisions are little understood and are not used as much as they should be, it has been considered necessary to mention them briefly here.

Court can move suo motu

(ii) Section 30 of the Code authorizes the Court when it appears reasonable, to order, suo motu, the delivery and answering of interrogatories, the admission of documents and facts and the discovery, inspection, production etc., of documents or other articles producible as evidence. These powers should be freely exercised in long and intricate cases or where the number of documents relied upon by the parties is large and it may appear that a long time would be taken up in formally proving the facts and the documents.

Interrogatories

(iii) Rules 1 and 2 of Order XI deal with discovery by interrogatories. Leave to deliver interrogatories should be given to such only of the interrogatories as the Court may consider necessary for disposing of the suit fairly or for saving costs. The party to whom interrogatories are delivered shall make answer by affidavit within the time prescribed in Order XI, rule 8 and may therein raise objections as provided in Order Xl, rule 6. Interrogatories may also be set aside or struck off by the Court, if these are unreasonable or vexatious or are prolix, oppressive or scandalous (Order XI, Rule 7). The answer to the interrogatories may be objected to only on grounds of insufficiency (Order XI, Rule 10). When a party omits to answer or answers insufficiently, the Court may on the application of the other party, require the former to answer or answer further by affidavit, or by *viva voce* examination. (Order XI, Rule 11.)

Discovery of documents

(iv) A party may also move the Court for discovery of documents which are or have been in possession or power of any other party to the suit, and which relate to any matter in question in the suit. The other party shall make answer on affidavit in form No.5, Appendix C to the Code and must make a full and complete disclosure along the lines indicated in this Form (Order XI, Rules 12 and 13). The production of documents can be resisted on three grounds; viz. (i) that these are evidence exclusively of the party's own case or title, (ii) that these are privileged, and (iii) when the party called upon to produce being a public officer considers that a disclosure would be injurious to public interest. The affidavit shall be treated as conclusive to the existence, possession and the grounds of objection to the production of the document, unless the court is reasonably certain that the objection is misconceived and the document is of such a nature that the party cannot properly make the assertions contained in the affidavit. The Court can also examine the document to decide the claim about privilege. The Court can order the production of the documents at any stage of the trial and a party can serve notice on the other party for the inspection of any of the documents mentioned in the pleadings or the affidavit of the other party (Order XI, rules 14 and 15). The

failure to comply with such order or notice does not justify the striking out of the defence, though the party at fault shall not afterwards be at liberty to put such document in evidence, except with the leave of the Court and on such terms as to costs as the Court thinks fit. Sections 163 and 164 of the Indian Evidence Act may also be read in this connection. The party on whom notice to produce or allow inspection is served, shall within ten days serve a counter notice, stating a time within three days after the delivery thereof offering inspection by the other party at his pleader's office, of such documents as he offers to produce. Where no such counter notice is given, the Court may, on the application of the party and if of the opinion that it is necessary for disposing of the suit fairly or for saving costs, make an order for inspection at a time and place fixed by the Court.

Business books.

(v) In the case of business books, the Court may, in the first instance, instead of ordering inspection of original books, order that copies of relevant entries verified to be correct by the affidavit of a person who has seen these books, may be furnished. Such affidavit shall state whether in the original books there are any and what erasures, interlineations and alterations, etc. The Court can still order inspection of the original books, and can look up the document to decide a claim regarding privilege.

Penalty for disobedience of orders.

(vi) Under rule 21 of Order XI, when a party disobeys valid orders of the court to answer interrogatories or for discovery and inspection of documents, he can, on the application of the other party, if a plaintiff, have his suit dismissed for want of prosecution, and if a defendant, have his defence, if any, struck out by the Court. The Courts should pass such order against a party only as a last resort and when the default is wilful.

12. Notice to admit documents or facts.

Order XII makes provisions for admission of facts and documents. Any party can serve on the other party a notice to admit facts or documents. Rule 3A now enables the Court to call upon any party to admit any document at any stage of the proceeding, notwithstanding that no notice to admit documents had been given under Rule 2. When a party is called upon to admit a document and if the same is not denied or stated to be not admitted in the pleading or in reply to the notice to admit documents, the document shall be deemed to be admitted except as against a person under a disability. However, still discretion has been left with the Court to require, for reasons to be recorded in writing, the document to be proved, otherwise than by such admission (Order XII Rule 2A). A notice to admit facts should be served at least 9 days before the day fixed for hearing; the other party may then admit the fact within 6 days of service of notice, otherwise he incurs liability for the costs of proving the fact.

The Court should resort to discovery and production of documents and delivery of interrogatories at the earliest.

Where a part of the case is admitted in the pleadings or otherwise, the Court may, on its own motion or on the application of any party, pass a judgment or order in respect of the part admitted.

13. **Form of Issues**

When the pleadings have thus been exhausted and the Court has before it the plaint, pleas, written statements, admissions and denials recorded under Order X, Rule 1, examination of parties recorded under Order X, Rule 2, and admissions of facts or documents made under Order XII of the Code, it will be in a position to frame correctly the issues upon the points actually in dispute between the parties. Each issue should state in an interrogative form one point in dispute. Every issue should form a single question, and as far as possible, issue should not be put in alternative form. In other words, each issue should contain a definite proposition of fact or law which one party avers and the other denies. An issue in the form, so often seen, of a group of confused questions is no issue at all, and is productive of nothing but confusion at the trial. A double or alternative issue generally indicates that the Court does not see clearly on which side or in what manner the true issue arises, and on whom the burden of proof should lie, and an issue in general terms such as "Is the plaintiff entitled to a decree" is meaningless. If there are more defendants than one who make separate answers to the claim, the Court should note against each issue the defendant or defendants between whom and the plaintiff the issue arises.

14. **Burden of Proof**

The burden of proof of each issue should be carefully determined and stated opposite to the issue.

15. **Preliminary Issue**

An issue of law only, and that too only relating to the jurisdiction of the Court, or a bar to the suit created by any law, can be treated as preliminary issue, if the case or any part thereof, may be disposed of on the said issue. However, mixed issue of law and facts should not be treated as preliminary issue.

Chapter 7

Documentary Evidence

1. List of documents and comparison with the list.

Whenever documents are produced by the parties, they must always be accompanied by a list in duplicate, in the form given below. The documents must be forthwith compared with the list, which if found correct, shall be signed by the Ahlmad who shall give signed copy of the list to the person producing the documents.

List of documents produced by Plaintiff/Defendant under Order XIII, Rule 1, Civil Procedure Code.

IN THE COURT OF_____ AT _____ DISTRICT

SUIT NO._____ OF

_____ Plaintiff.

Versus

_____Defendant.

List of documents produced with the plaint/written statement (or at first hearing) on behalf of plaintiff or defendant.

This List was filed by _____this _____day of 20

1	2	3	4		5
			What became of the document		Remarks
Serial No.	Description and date, if any, of the document.	What the dcoument is intended to prove	If brought on the record, Exhibit mark put on the document.	If rejected, date of return to the party and signature of party or pleader to whom the document was returned.	

Signature of party or pleader producing the list.

Note. Column 4 of the list should be filled in at appropriate stage.

2. Preservation of documents.

Care should be taken to protect old and delicate documents from damage likely to be caused by frequent handling in courts. The common method of pasting the document on a piece of strong paper will be found useful in most cases but where there is writing on both the sides, the document may be preserved between two sheets or by lamination or cellophane glued together at the edges so that the document can easily be examined without being taken out of its protective covering. In case the parties agree, a photographic copy may also be placed on the file and the document kept in a sealed cover. The party producing the document may be asked to supply the material necessary for its proper preservation.

3. Calling upon parties to produce documents.

The parties should produce documents relied on by them and in their possession or power with their pleadings.

The Court should formally call upon the parties at the first hearing; at the time of framing issues to produce their documents and should make a note that it has done so.

4. Late production of documents.

The above provisions as regards the production of the documents at the initial stage of a suit are intended to minimize the chances of fabrication of documentary evidence during the course of the suit as well as to give the earliest possible notice to each party of the documentary evidence relied upon by the opposite party. These provisions should, therefore, be strictly followed, and if any document is tendered at a later stage, the Court should consider carefully the nature of the document sought to be produced (e.g., whether there is any suspicion about its genuineness or not) and the reasons given for its non-production at the proper stage, before admitting it. The fact of a document being in possession of a servant or agent of a party on whose behalf it is tendered is not itself a sufficient reason for allowing the document to be produced after the time prescribed by Order XIII, Rule 1. The Court must always record its reasons for admission of the document in such cases, if it decides to admit it.

5. Forged or Defective Documents.

Should any document which has been partially erased or interlined or which otherwise presents a suspicious appearance, be presented at any time in the course of proceedings, a note should be made of the fact, and, should a well-founded suspicion of fraudulent alteration or forgery subsequently arise, the document should be impounded under Order XIII, Rule 8, and action taken under Section 340 of the Code of Criminal Procedure. Similarly, should any document be presented which appears to have been executed on

unstamped or insufficiently stamped paper, action should be taken under sections 33 and 35 of the Indian Stamp Act, 1899. Where a document produced is written in pencil, the court should ask for a true copy thereof written in ink.

6. Production and admission of documents distinguished.

Courts should be careful to distinguish between mere production of documents and their ‘admission in evidence' after being either 'admitted' by the opposite party or 'proved' according to law. When documents are 'produced' by the parties, they are only temporarily placed on the record subject to their being 'admitted in evidence' in due course. Only documents which are duly ‘admitted in evidence’ form a part of the record, while the rest must be returned to the parties producing them (Order XIII, Rule 7).

7. Documents must be tendered in evidence.

Every document which a party intends to use as evidence against his opponent must be formally tendered by him in evidence in the course of proving his case. If a document is not on the record, it must be called from and produced by, the person in whose custody it is.

8. Procedure when documents admitted by the opposite party.

If the opponent does not object to the document being admitted in evidence, an endorsement to that effect must be made by the Judge with his own hand; and, if the document is not such as is forbidden by the Legislature to be used as evidence, the Judge will admit it or so much of it as the parties may desire to be read.

9. Procedure when document is not admitted by the opposite party.

If, on the document being tendered, the opposite party objects to its being admitted in evidence, two questions commonly arise; first, whether the document is authentic, or, in other words, is that which the party tendering it represents it to be; and second, whether, supposing it to be authentic, it is legally admissible in evidence as against the party who is sought to be affected by it. The latter question in general, is a matter of argument only; but the first must, as a rule, be supported by such testimony as the party can adduce.

10. Legal objections as to admissibility.

All legal objections as to the admissibility of a document should, as far as possible, be promptly disposed of, and the Court should carefully note the objection raised and the decision thereon.

The Court is also bound to consider, *suo motu,* whether any document sought to be proved is relevant and whether there is any legal objection to its admissibility. There are certain classes of documents which are wholly inadmissible in evidence for certain purposes, owing to defects such as want of registration etc. *(e.g.* Section 49 of the Indian Registration

Act). There are others in which the defect can be cured, e. g., by payment of penalty in the case of certain unstamped or insufficiently stamped documents.

11. Mode of Proof.

As regards the mode of proof, the provisions of the Indian Evidence Act should be carefully borne in mind. The general rule is that document should be proved by primary evidence, i.e., the document itself should be produced in original and proved. If secondary evidence is permitted, the Court should see that the conditions under which such evidence can be let in, exist.

Old documents.

If an old document is sought to be proved under Section 90 of the Indian Evidence Act, the Court should satisfy itself by every reasonable means that it comes from proper custody.

When copies instead of original may be put in.

Under the Bankers' Books Evidence Act, 1891, certified copies can be produced, instead of the original entries in the books of Banks in certain circumstances. Certificate required by section 2(8) of this Act should appear at the foot of such copies

A similar privilege is extended under Section 36 of the Punjab Cooperative Societies Act, 1961 and section 42 of the Haryana Cooperative Societies Act, 1984 to entries in books of Societies registered under the said Acts and to entries in the accounts prescribed under Clause (a) of Section 3(1) of the Punjab Regulation of Accounts Act, 1930.

12. Proof of signature or attestation.

There are certain points which the Courts should bear in mind, when the signature or attestation of a document is sought to be proved.

Before a witness is allowed to identify a document, he should ordinarily be made, by proper questioning, to state the grounds of his knowledge with regard to it. For instance, if he is about to speak to the act of signature, he should first be made to explain concisely the occurrences which led to his being present when the document was signed, and if he is about to recognise a signature on the strength of his knowledge of the supposed signer's hand-writing, he should first be made to state the mode in which this knowledge was acquired. This should be done by the party who seeks to prove the document. It is the duty of the Court, in the event of a witness professing ability to recognise or identify handwriting, always to take care that his capacity to do so is thus tested, unless the opposite party admits it.

13. **Plans.**

In all cases in which a plan of the property is produced by either of the parties or is required from it by the Court and is not admitted by the opposite party, it must be properly proved by--

(a) examination of the person who prepared it and by requiring him to certify it as correct and to sign it, or

(b) by affidavits or examination of the parties and witnesses.

It is further open to the Court to issue a commission at the cost of the parties or either of them to any competent person to prepare a correct plan and to examine the person so appointed in order to explain and prove it.

14. **Endorsements on documents admitted in evidence.**

Every document 'admitted in evidence' must be endorsed and signed or initialled by the Judge in the manner required by Order XIII, Rule 4, and marked with an Exhibit number. Documents produced by the plaintiff may be conveniently marked as Ex. P.1, Ex. P.2, etc., while those produced by the defendant as Ex. D.1, D.2, D.3, etc. To ensure strict compliance with the provisions of Order XIII, Rule 4, each Civil Court has been supplied with a rubber stamp in the following form:—

SUIT
No._____Of_____20___

Title_____ Plaintiff_____ *Versus* _____Defendant.

Produced by_____on the_____day of_____20___

Nature of document_____

Stamp duty paid Rs. P. is (is not) correct.

Admitted as Exhibit No._____

On the_____day of_____20____

Judge

The entries in the above form should be filled in at the time when the document is admitted in evidence under the signature of the Judge. This precaution is necessary to prevent any substitution or tampering with the document. Details as to the nature of the document and the stamp duty paid upon it are required to be entered in order that Courts may not neglect the duties imposed on them by Section 33 of the Indian Stamp Act, 1899. District Judges should see that all Courts subordinate to them are supplied with these stamps.

The above rule also applies to documents produced during the course of an enquiry made on remand by an appellate Court.

The endorsement and stamp will show that the document is proved. It is to be remembered that the word "proved" used in the context here means "that judicial evidence has been led about it "and does not imply "proof" in an absolute sense.

15. **Endorsements on documents not admitted in evidence.**

Documents which are not admitted in evidence must similarly be endorsed before their return with the particulars specified in Order XIII, Rule 6, together with a statement of their being rejected and the endorsement must be signed or initialled by the Judge.

16. **Documents to be placed in strong cover.**

Documents which are admitted in evidence should be placed in strong covers, one cover being used for documents produced by the plaintiff and the other for those produced by the defendant. The party while producing the documents shall furnish strong cover.

17. **Consequences of not properly admitting documents.**

Owing to the neglect of the foregoing directions as regards endorsing and stamping of documents, it is often impossible to say what papers on the file constitute the true record; copies of extracts from public or private records or accounts, referred to in the judgment as admitted in evidence, are often found to be not "proved" according to law, and sometimes altogether absent.

18. Revision of record before writing judgment to see that only admitted documents are on the record.

It is the duty of the Court, before hearing arguments, finally to revise the record which is to form the basis of its judgment, and to see that it contains all that has been formally admitted in evidence and nothing else. Any papers still found with the file, which have not been admitted in evidence, should be returned to the parties.

Duty of appellate Court to see that this has been done.

Appellate Courts should examine the records of cases coming before them on appeal with a view to satisfying themselves that subordinate Courts have complied with the provisions of the law and instructions of the High Court on the subject, and should take serious notice of the matter when it appears that any Court has failed to do so.

19. **Extracts or copies of settlement record and Riwaj-i-Am to be placed on record.**

It frequently happens that although the *wajib-ul-arz or riwaj-i-am* of a village or other revenue record is referred to by the parties and by the Court itself as affording most important evidence, there is no certified extract or copy with the record of the entries relied on. When there is a copy, it is often incomplete or so carelessly written as to be unintelligible. It becomes necessary to call for the originals thus causing damage to the records themselves, and delay and inconvenience to the parties to the suit. It is the duty of

Appellate Courts to see that the Courts subordinate to them have proper extracts or copies of relevant entries in Settlement records made, verified and placed on the record.

20. Production of Court/public records & records of former Indian States.

No application for the production of a Court record of any other case should be entertained unless it is supported by an affidavit and the Court is satisfied that the production of the original record is necessary (Order XIII, Rule 10). The same principle may well be applied to other public records also. In the case of revenue records, the procedure laid down in Chapter ___ of this Volume "Special Kanungo" should be followed.

It should be borne in mind that the mere production of a record does not make the documents therein admissible in evidence. The documents must be proved at the trial according to law.

Requisition for records of Courts in other States, including the former Indian States which have now merged with the States or integrated as States or Territories of the Indian Union, should be submitted through the Registrar General, Punjab & Haryana High Court at Chandigarh.

Care should, however, be taken in not treating the applications for production of public records and documents too lightly. Such documents are liable to be lost or mutilated in the course of transmission and a good deal of time of the clerks is wasted in checking these records in order to see whether they are complete according to the index. Original records or documents should, therefore, not be sent for, unless the Court is fully satisfied that the production of a certified copy will not serve the purpose.

Attention is drawn to Rule 5, Order XIII, Civil Procedure Code, under which it is open to the Court to require copy of an entry of a public record to be furnished by one or the other party to the case. In the absence of special reasons which should be recorded in writing, Court should not detain the original of a public document but should return it after a copy has been furnished.

21. Return of documents.

Documents admitted in evidence can be returned to the persons producing them, subject to the provisions of Order XIII, Rule 9. If an application is made for return of a document produced in evidence before the expiry of the period for filing an appeal or before the disposal of the appeal (if one is filed), care should be taken to require a certified copy to be placed on the record, and to take an undertaking for the production of the original, if required.

In pending cases, application for return of documents should be made to the Court where the case is pending.

In decided cases, the Officer-in-charge of the Record Room should return the documents without consulting the original Court only when the applicant delivers a certified copy to be substituted for the original and undertakes to produce the original if required to do so.

In all other cases, application shall be made to the original court or its successor. If the Court considers that the document may, under Order XIII, Rule 9, be returned, it shall record an order accordingly.

The application should then be presented to the Officer-in-Charge of the Record Room who will pass an order for return of the document.

Chapter 8

Hearing of Suits, Adjournments, Examination of Witnesses etc.

1. List of witnesses.

(i) Provisions of Order XVI, Rules 1, 1A and 2 of the Code of Civil Procedure should be carefully studied.

(ii) The parties must submit list of witnesses proposed to be examined by them, on or before the date appointed by the Court, but not later than 15 days from the date of settlement of issues. A party shall not be entitled to produce any witnesses not named in the list, without an order of the Court stating the reasons therefor.

(iii) It is the business of the parties to take all reasonable steps to have their witnesses present in Court on the day fixed for their evidence. Any party desirous of summoning any witness through Court should move application and deposit process fees and other necessary expenses of the witness. Such application should be moved by the party having the right to begin within five days of presenting the list of witnesses and by the opposite party within five days of the date of hearing when the case is ordered to be fixed for his evidence for the first time. Thereupon, the Court should issue requisite summons to the witness as soon as possible so as to secure his attendance on the date fixed for hearing. Without following the aforesaid process, no party shall be entitled to obtain process of the Court to enforce the attendance of any witness without an order of the Court stating the reasons therefor.

2. Statement of case.

The trial should begin by the party having the right to begin (Order XVIII, Rule 2, of the Code) stating his case and producing evidence in support of the issues to be proved by him. The case thus stated ought to be reasonably in accord with the party's pleadings, because no litigant can be allowed to make at the trial a case materially and substantially different from that which he has placed on record, and which his adversary is prepared to meet. The procedure laid down in the aforesaid rule is often neglected by Courts, but it is highly useful and should be invariably followed.

3. Examination-in-chief.

In the examination-in-chief of witnesses, questions ought not to be put in a leading form, nor in such a form as to induce a witness, other than an expert, to state a conclusion of his reasoning, an impression of fact, or a matter of belief. The question should be directed to elicit from him facts which he actually saw, heard or perceived within the meaning of Section 60 of the Indian Evidence Act. The questions should be simple, should be put one by one and should be framed so as to elicit from the witness, as nearly as may be in chronological order, all the material facts to which he can speak of his own personal knowledge. A general request to a witness to tell what he knows or to state the facts of the case, should as a rule, not be allowed, because it gives an opening for a prepared story. Where the party calling witnesses is not aided by counsel, and is unable himself to properly examine his witnesses, he may be asked to suggest questions and the examination may be conducted by the Court. In view of Order XVIII Rule 4 of the Code, examination-in-chief of the witness shall ordinarily be on affidavit and copy thereof supplied to opposite party. However, summoned witness may be given option to make examination-in-chief on affidavit or by being present in the Court, having regard to the facts of the case. Ordinarily, there should be no adjournment for cross-examination on the ground that copy of affidavit of examination-in-chief was supplied on the same day. Practice of granting such adjournments is deprecated and should stop forthwith.

4. Cross-examination.

When the examination-in-chief is concluded, the opposite side should be allowed to cross-examine the witness or, if unable to do so, to suggest questions to be put by the Court. In cross-examination leading questions are permissible. In view of Order XVIII Rule 4(2) of the Code, cross-examination and re-examination shall be taken either by the Court or by the Commissioner appointed by it, having regard to the facts of the case.

5. Re-examination.

Then should follow, if necessary, re- examination (with leave of the Court)for the purpose of enabling the witness to explain answers which he may have imperfectly given on cross-examination, and to add such further facts as may be admissible for the purpose.

6. (a) How far should Court/Commissioner interfere in the conduct of examination?

When the examination, cross-examination and re-examination are conducted by the parties or by their pleader, the Presiding Officer/Commissioner ought not, as a general rule, to interfere, except when necessary, e.g., for the purpose of causing questions to be put in a clear and proper shape, of checking improper questions, and of making the witness give precise answers. At the end, however, if these have been reasonably well-conducted, he ought to know fairly well the exact position of the witness with regard to the material facts of the case; and he should then put any questions to the witness that he thinks necessary. The examination, cross-examination, re-examination and examination by the Court (if any) should be indicated by marginal notes on the record.

(b) Conduct of proceedings by lawyers' clerks.

Complaints have been received that the Civil Courts sometimes allow Clerks of lawyers to appear, examine or cross-examine witnesses or to conduct the proceedings in other manners, when the lawyers themselves are otherwise engaged. This is highly irregular and is against law and District Judges should take steps to put a stop to this practice wherever it is known to prevail.

7. Examination of witnesses called by Court.

The examination of witnesses (including a party to the suit) called by the Court under the provisions of Order XVI, Rules 7 and 14, of the Code, should always be conducted by the Court itself; and after such examination, if the parties to the suit desire it, the witnesses may be cross-examined by the parties. Upon the close of the cross-examination, the re-examination of such witnesses, if necessary, should be conducted by the Court in the manner above stated.

8. Deposition should be read over.

The deposition of each witness should be read over to him in open Court or by the Commissioner, as the case may be, and corrected, if necessary, as soon as his evidence has been finished.

9. Mode of recording evidence.

The evidence shall be taken down in the language of the Court by or in the presence of the Judge and under his personal directions and superintendence or from his dictation directly on the type-writer or computer or if the Judge, for reasons to be recorded so directs, recorded in his presence mechanically i.e. with the help of audio or audio visual electronic media.

Where the evidence is to be recorded by the Commissioner, he shall take down the same in the language of the Court in his own hand or by dictation directly on the type-writer or computer or get it recorded mechanically in his presence.

It has come to notice of this Court that in some of the subordinate Courts, evidence is being recorded by officials of the Court without direction, superintendence and dictation of the Judge, who himself is busy in other work. This is highly irregular. The District Judges should take immediate steps to put a stop to this practice, wherever it is prevailing. Recording of evidence should in no case be left to any official of the Court.

10. Arguments.

When the party having the right to begin has stated his case and the witnesses adduced by him have been examined, cross-examined and re-examined, and all the documents tendered by him have been either received in evidence or refused, it then devolves upon each of the opposite parties, who have distinct cases, to state their respective cases in succession, should they desire to do so. After all of them have done so, or have declined to exercise the right, the evidence, whether oral or documentary, adduced by each in order, should be dealt with precisely as in the case of the first party; and on its termination and after they have, if they so desire, addressed the court generally on the whole case, the first party should be allowed to comment in reply upon his opponent's evidence. Any party may address oral arguments and with permission of court, furnish written arguments in accordance with provisions of Order XVIII Rule 2 of the Code.

11. Rebuttal evidence.

If, however, the case of an opposing party is such as to introduce into the trial, matter which is foreign to and outside the case of the first party and the evidence adduced by him, then the latter must be allowed, if he so desires, to rebut this by further evidence(commonly called rebuttal evidence), and his opponent must be allowed to speak upon it by way of reply before the first party himself makes his own reply. But this is not to be understood as entitling the first party to ask for an adjournment for that purpose. He is bound to be prepared with such rebutting evidence, and an adjournment should only be allowed by the Court for good and sufficient reasons, costs being, if necessary, allowed to the opposite party.

12. Examination of parties as witnesses.

The vicious practice of each party summoning his opponent as a witness merely with the design that counsel for each party gets a chance of cross-examining his client, obtains in some of the lower Courts. This practice is strongly condemned and must cease. On the other hand, when the parties are personally acquainted with any facts which they have to prove, they are expected to go into the witness-box and stand the test of cross-examination

by the opposite party. The failure of a party to go into the witness-box in such circumstances may, in the absence of a satisfactory explanation, justify the court in drawing an inference which is unfavourable to that party. However, the court may, for reasons to be recorded, direct any party to examine any witness at any stage. The expression 'witness' here includes a party as his own witness.

13. Note about closing of evidence.

When the examination of the last witness produced in Court by a party is closed, statement of the party or his counsel should be recorded that the evidence of that party is closed. If either party states that he desires additional witnesses to be summoned or examined, the Court should record the fact and pass an order thereupon. If evidence of any party is closed by order of the Court, the number of effective opportunities granted to that party for its evidence shall be recorded in the order.

14. Continuous hearing of evidence.

Judges should always endeavour to hear the evidence on the date fixed, as much expense and inconvenience is caused by postponements ordered on insufficient grounds before the witnesses in attendance have been heard. Under Order XVII, Rule 1 of the Code, when the hearing of the evidence has once begun, the hearing of the suit should be continued from day to day until all the witnesses in attendance have been examined, unless the Court, for reasons to be recorded, finds the adjournment of the hearing to be necessary.

It should be noted that Rule 1 of Order XVII as amended by the High Court requires that when sufficient cause is not shown for an adjournment, the Court shall proceed with the suit forthwith.

15. Adjournments for evidence.

It has been observed that a number of Courts grant an adjournment merely because the party at fault is prepared to pay the costs of adjournment. Subordinate Courts should bear in mind that the offer of payment of the costs of adjournment is not in itself a sufficient ground for adjournment. The provisions of Order XVII, Rule 3 also deserve notice in this connection. If a party to a suit to whom time has been granted for a specific purpose as contemplated by Order XVII, Rule 3, Civil Procedure Code, fails to perform the act or acts for which time was granted without any good cause, the rule gives the Court discretion to proceed to decide the suit "forthwith" i.e., without granting any adjournment. In such cases, a further adjournment should not ordinarily be granted, merely because offer is made for payment of costs. Adjournments should not be granted liberally or lightly. An adjournment granted otherwise than on full and sufficient grounds is a favour and in Civil suits, favour can be shown to one party only at the expense of the other.

Proviso to Order XVII Rule 1(1) of the Code that not more than three adjournments shall be granted to a party for its evidence, is directory and not mandatory.

However, it should ordinarily be followed, although not very rigidly. No hard and fast rule can, however, be laid down. Each case must be judged on its own merits.

16. Adjournments for arguments.

After evidence of the parties is closed, only a short adjournment should be granted for arguments. Frequent adjournments should not be granted for arguments

17. Interlocutory orders and notes.

All orders made by the Court relating to change of parties, or adjournments, or bearing upon the course of the hearing of the suit other than depositions, orders deciding any issue and the final judgment, and notes of all material facts and occurrences which may have happened during the hearing of the suit, such as the presence of witnesses, etc., must be carefully recorded from time to time by the Presiding Officer in his own handwriting or be type-written or computer printed and signed and dated by the Judge and appended to the record. Each "order" or "note" should be clearly marked as such.

The practice prevails in the subordinate Courts of writing orders on the back of plaints or applications. Such orders may sometimes escape notice during the hearing of the suits or appeals. This practice should cease forthwith. Orders should be recorded on separate sheets in chronological order.

18. **Upholding of orders/judgments**

All substantive/effective orders and final judgments shall be uploaded on the internet by concerned Stenographer/Judgment Writer immediately after the same are signed by the Presiding Officer. On preparation of decree-sheet/memo of costs etc., the same shall also be uploaded immediately.

Chapter 9

Dismissals in Default and Ex-parte Proceedings

1. General

Order IX and Order XVII, Rules 2 and 3 of the Code deals with the appearance of parties and the consequences of non-appearance on the dates of hearing.

2. 'No instructions' by Advocate

If a party is represented by an Advocate, who on any adjourned date of hearing pleads 'no instructions' and no other authorized representative of the said party appears on the said date of hearing, such party shall be deemed to have not appeared and the Court may pass appropriate order accordingly under Order IX or Order XVII, Rules 2 and 3, and it shall not be necessary in such case for the Court to issue notice to the party represented by the said Advocate although the Court may, in its discretion, issue notice to such party by fixing next date of hearing.

3. Default by defendants

(a) Even in which cases defendant is proceeded ex parte, the plaintiff, however, must prove his case to the satisfaction of the Court, before he can obtain a decree. The defendant, it may be observed, may apply under Order IX, Rule 13, for an order to set aside the *ex-parte* judgment at any time within the limitation period. The provisions of section 5 of the Limitation Act, 1963 are applicable to all applications for the setting aside of *ex- parte* decrees and for restoration of suits under Order 9, Rules 4 and 9. These applications may, therefore, be admitted even after the limitation period if the applicant satisfies the court that he had sufficient cause for not making the application within such period. If he satisfies the Court that the summons was not "duly served", or that he was prevented by "sufficient cause" from appearing when the suit was called for hearing, the Court should set aside the order on such terms as to costs or otherwise as it may deem fit.

b) Attention is drawn to Order IX, Rule 7, which lays down the procedure for setting aside *ex parte* proceeding when the hearing of the suit has been adjourned *ex parte* but no *ex parte* decree has been passed.

4. Hasty dismissal not advisable.

The tendency to dismiss cases in default or to pass *ex parte* orders in a hasty manner in order to show an increased out-turn is to be strongly deprecated and is not to be resorted to in any case. The Presiding Officers should note down the time in their own hand when a case is dismissed in default or an order to proceed *ex parte* is passed.

The provisions of Order IX and Order XVII of the Code must be worked in a reasonable manner, otherwise they will result in a number of applications for setting aside orders passed in the absence of one or both parties. It is possible that a party may have temporarily gone away to call his counsel or to refresh himself and a person cannot be expected to be in constant attendance throughout the day. The court should, to avoid hardship, lay aside the case where any party does not appear when the case is called. The case may be called again, later in the day after the other work has been finished or when both the parties turn up and the Court can conveniently take up the case that had been laid aside. If these rules are worked in a reasonable manner, applications for restoration of suits or setting aside of *ex parte* orders would be reduced in number. Such applications generally lead to delay in the disposal of cases and waste a good deal of the time of the courts and the litigants.

5. Order of "Dakhil Daftar" is irregular.

There is a tendency of Presiding Officers of Civil Courts to pass orders that cases should be "dakhil daftar" ('filed'/ 'consigned'). This practice is incorrect. A Presiding Officer should invariably make it clear what the precise nature of the order is, i.e., whether the case is postponed or dismissed and the rule, if any, under which the order is passed should also be mentioned.

6. Procedure when the plaintiff is not present on the preliminary date.

It is a practice, when a plaint is presented, to fix a short preliminary date, in order to permit the examination of the plaint. On this preliminary date, the plaintiff is expected to appear to receive notice of the date fixed for the hearing of the suit. It sometimes happens that the plaintiff does not appear on this date and several cases have come to the notice of the High Court in which Courts have forthwith dismissed the suit in default by orders purporting to be made under Order IX.

This procedure is incorrect as it has been held that the preliminary date is not a date fixed for hearing and therefore, the provisions of Order IX do not apply. The correct procedure in such cases may be deduced from the Code and has been referred to in several judgments of the High Court. It is as follows:—

(i) If the plaint is in order and process fee for the summoning of the defendant has been filed with the plaint, the Court should issue summons to the defendant and a notice to the plaintiff to appear on the date for which the defendant is summoned. If on that date the plaintiff does not appear inspite of the service of the notice on him, the suit may be dismissed under Order IX, Rule 3 or Rule 8 of the Code whichever is applicable.

(ii) If the plaint is in order but process fee has not been filed with it, the Court should fix a date for the appearance of the defendant and issue notice to the plaintiff calling upon him to appear on that date and to deposit process fee by a specified date so that

the defendant may be summoned. If on the date fixed, it is found that no summons has been issued owing to nonpayment of process fees, or that the summons could not be served owing to late payment of process fees, the suit can be dismissed under Order IX, Rule 2. If process fee has been paid as directed, the other provisions of Order IX will apply.

(iii) If the plaint is not in order and the defects are such as to entail its rejection under Order VII, Rule 11, the Court should record an order rejecting it. If it is to be rejected for failure to pay court fees, it will be necessary first to issue a notice calling on the plaintiff to make up the deficiency unless he has already been given time to do so. In such cases the final order to be passed, and entered in Civil Register No. 1, is "plaint rejected."

(iv) If the defects in the plaint are not such as to call for its rejection under Order VII, Rule 11, the Court should proceed in accordance with the procedure outlined in sub-clauses (i) and (ii) above, the question of remedying the defects being taken up at the first hearing.

Chapter 10

Speedy Disposal of Cases

1. Cause Diary

The speedy disposal of Court business is a matter which requires the earnest attention of every judicial officer. Delays of law are notorious in this country and tardy justice is often no better than injustice.

The proper despatch of Court work depends not merely on the ability of an officer, but also to a large extent on the personal attention paid by him to its adjustment and control. Amongst the important matters, which should receive his personal attention is the cause diary. The practice of leaving the fixing of dates to the clerical staff, leads to abuses and results frequently in confusion of work. The fixing of an adequate cause list which can be got through without difficulty during the Court hours requires some intelligence and forethought, and unless the officer pays personal attention to the matter and fixes the list with due regard to the time likely to be taken over each case, there is risk of a considerable number of cases being postponed from time to time with consequent delay in their disposal and inconvenience to the litigant public.

District Judges should from time to time examine the diaries of Civil Judges in their districts in order to see that too much or too little work is not fixed for any day. A sufficient number of cases should, however, be fixed for hearing, so that even if some cases collapse, there would be sufficient work to keep the Judge fully occupied throughout the day.

2. Causes of delay in disposal of cases.

As a result of annual inspections, it has been found that the delay in the disposal of cases is mainly due to the following errors :—

(i) Orders for the issue of notice to parties and summonses to witnesses are given without specifying the date by which process-fees must be paid into Court. Two working days should be the usual time allowed.

(ii) On failure of service, orders for the issue of fresh process are given without ascertaining the cause of the failure of the service and fixing the responsibility thereof.

(iii) Documents, instead of being accepted either with the plaint or at the first hearing, are accepted at every stage of the case.

(iv) Cases are adjourned for proper orders by the Reader or other official of the Court when the Presiding Officer is on leave or out of station for giving evidence.

(v) Non-attendance of the witnesses on the date fixed.

(vi) Applications for the issue of interrogatories, which should be accepted at the earliest stage of the case only, are accepted at a very late stage.

(vii) Witnesses, who are present in Court, are often sent away un-examined on all kinds of inadequate pretexts.

(viii) Cases are not proceeded with from day to day, and evidence is taken in driblets.

(ix) Non-receipt of the summoned record from which the witness has to give evidence.

(x) Unnecessary adjournments are granted for producing rebuttal evidence by the plaintiff even in those cases where the plaintiff has no right to produce evidence in rebuttal.

(xi) Adjournments are granted for the preparation of arguments at all stages even in the matter of interlocutory orders.

(xii) Unnecessary long adjournments are granted, when adjournments are unavoidable.

(xiii)Adjournments are sought by counsel on the ground that he is busy in the Sessions Court or another court or is not ready with the arguments.

(xiv) Suits are dismissed or restored without adequate reasons.

(xv) Orders are written by the Reader instead of the Presiding Officer.

(xvi) Personal attention is not paid to service of processes. The instructions given in Chapter 4 of this Volume should be carefully observed.

(xvii) Adjournments on insufficient grounds in cases which have already become old.

(xviii) Fixing a large number of cases for a particular day and then postponing some of them for want of time.

(xix) Delay in the disposal of appeals against preliminary decrees, etc.

Of all the foregoing, the most serious causes of delay are errors (i) and (ii).

All orders of whatever nature which are passed after the admission of a plaint should be written or dictated by the Presiding Officer himself.

Intermediate dates should be fixed to watch the receipt of files/records, if any, requisitioned from some other quarter.

3. **Commissions**

Delays also occur frequently in cases in which a commission has been issued. Courts should insist on submission of reports by the Commissioners within a reasonable time and should not grant adjournments without satisfying themselves that the Commissioners are doing their duties and that sufficient cause has been shown for the grant of an adjournment.

4. Cases held up owing to records being in the appellate Court or pending decision of another case.

Efforts should be made to give priority to cases, for the decision of which other cases are held up. Civil Judges are authorised to bring to notice of appellate Courts cases where a suit has already been postponed for more than 3 months merely because the records happen to be with the appellate Court. The Presiding Officer of the appellate Court should then treat the appeals in which records have been sent for by the lower Courts as "urgent" and dispose of them as early as possible. Appellate Courts should also treat all appeals in which proceedings have been stayed in a lower Court as "urgent."

5. Interlocutory order.

Applications for interlocutory orders, the admission of which will hold up the original proceedings, should be carefully scrutinized and promptly disposed of.

6. **Statement of old cases.**

All Civil Courts are required to furnish to the High Court a statement of old civil cases pending over two years every quarter before the 10th of the following month in the proforma appended below together with their explanations where necessary and the comments of the District Judge concerned thereon. The proceedings of quarterly meeting of Judicial Officers should accompany the aforesaid statement.

Proforma 'A'

Consolidated statement of more than two years old Civil cases pending in the Courts of Civil Judges of _____, District for the quarter ending_____

Name of the Court	Nature of Civil cases	No. of cases pending at the	No. of cases which became	Total No. of cases	No. of cases disposed of	Balance	No. of stayed cases

		end of the last quarter	over two years old during the quarter		during the quarter		
1	2	3	4	5	6	7	8

1. Civil Appeal
2. Civil Suits
3. Rent Act cases
4. Execution cases.

7. <u>Priority to certain cases.</u>

Cases in which Government servants, military officers, soldiers, etc., are involved or to which the Government is a party should be disposed of speedily on priority.

Cases under the Rent Act on the ground of personal necessity, rent applications filed by specified landlords or Non-resident Indians and the cases in which senior citizen is a party should also be disposed of on priority as quickly as possible.

9. <u>Compromises.</u>

Order XXIII, Rule 3 of the Code, relating to ‘Compromises of suit’ has been amended by High Court and the two provisos added to this rule should be carefully studied alongwith the rule. The dispute about a compromise or adjustment or the parties' negotiations for the same, should not, as far as possible, be allowed to hold up the trial of the issues on merits and the witnesses in attendance should not ordinarily be sent back unexamined. When the case cannot be proceeded with as indicated, the reasons should be recorded in writing. The judgment in the suit should not, however, be announced until the question of adjustment or satisfaction has been decided.

Chapter 11

Incidental Proceedings.

1. Attachment or arrest before judgment.

(i) If at the time of filing the plaint, or at any other stage of the suit, an application is made by the plaintiff, under Order XXXVIII of the Code, for the arrest of the defendant or for the attachment of his property before judgment, the Court should proceed to consider the application with reference to the provisions of the Code and the following instructions.

(ii) Orders for arrest or attachment before judgment ought not to be made on insufficient grounds. The circumstances which justify a Court in passing an order of this nature are distinctly stated in Order XXXVIII of the Code of Civil Procedure. The Court should in every such case, be satisfied (Order XXXVIII, Rules 1 and 5) that the defendant is about to dispose of or remove the property from its jurisdiction or that he has left or is about to leave its jurisdiction, with such intent as is mentioned in the said rules.

2. Temporary injunction.

It has been noticed that temporary injunctions are frequently issued *ex parte* by subordinate Courts, without realizing fully their consequences. The following instructions in respect of such orders should, therefore, be ordinarily followed :—

(i) The Court should scrutinize carefully the plaint, the application and the affidavit before interfering with the defendant's rights and should satisfy itself that some recent happenings have justified the interference without notice to the defendant.

(ii) Court should use the rules in Order XXXIX, Civil Procedure Code, with great discrimination, and should not overlook the significance of the word "may" wherever it occurs. It should not treat the exception in Rule 3 as the normal procedure. Interlocutory injunctions should be granted *ex parte* only in very exceptional circumstances, and only when the plaintiff can convince the Court that by no reasonable diligence could he have avoided the necessity of applying behind the defendant's back.

(iii) Where the court proposes to grant *ex parte* injunction, it shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.

(iv) Such injunctions, when granted, should be limited to the minimum time within which a defendant can come before the Court, assuming that to get rid of the injunctions, he will be

prepared to use the greatest expedition possible. The court should make endeavour to finally dispose of the application within 30 days from the date on which the ex parte injunction was granted and where it is unable to do so, it shall record the reasons for such disability.

(v) The Court should state clearly what acts it has restrained. Vague orders such as 'Issue of temporary injunctions as prayed' should be avoided. Where only some of the acts mentioned in the petition need to be urgently restrained, the *ex parte* order should be confined to these only. The plaint or petition should not merely be copied out. Similarly, vague order of 'status quo' should not be passed. It should be specified that status quo is to be maintained regarding what i.e. possession, construction, user etc.

(vi) When the defendant appears and files his affidavit, the plaintiff should be given only a few days to answer it. The contested application should then be heard, as soon as possible, and if the Judge cannot dispose it of at once, may, for the term of the adjournment, which should be as short as possible, either grant an ad interim injunction, or obtain an undertaking from the defendant not to do any acts complained against.

(vii) After the plaintiff has obtained an interim or *ex parte* order, the court should take care to see that he does not abuse the advantage by resorting to the usual dilatory tactics, such as delay in deposit of process fees, evasion of service of summons on a pro-forma defendant interested with the plaintiff in delaying the suit or in other manners.

(viii)The above instructions are not intended to restrict the discretion of Courts, but every application for an *ex parte* injunction should be very carefully considered in the light of these instructions and should not be granted unless sufficiently good grounds are made out.

(ix) It has also come to notice of the High Court that some subordinate Courts do not grant ex parte injunction, even if good ground is made out for the same, apprehending that the application for temporary injunction may not be decided within 30 days. Courts should not, on this apprehension, hesitate to grant ex parte temporary injunction, where sufficient ground for the same is made out, because non-grant of ex parte injunction may defeat the very purpose and may lead to miscarriage of justice.

3. **Death, Marriage or insolvency of parties.**

The procedure to be followed in the event of death, marriage or insolvency of the parties is laid down in Order XXII, Civil Procedure Code. In view of amendment made therein by the High Court, a suit does not abate on the death of plaintiff or defendant, even if his legal representative is not brought on record, and judgment may be pronounced notwithstanding the death and the judgment shall have the same effect as if it had been pronounced before the death took place.

4. **Compromise of suit**

Provisions of Order XXIII Rule 3 of the Code of Civil Procedure as amended by the High Court should be complied with while recording satisfaction of claim wholly or in part, or adjustment of suit wholly or in part by lawful compromise, and while deciding question/application relating thereto. Decree as per satisfaction or compromise made by the parties may be passed, whether or not the subject matter of the satisfaction or compromise is same as the subject matter of the suit. Where compromise or satisfaction alleged by one party is denied by the other, judgment in the suit should not be pronounced on merits until the question of compromise or satisfaction has been decided.

5. **Amendment and Review**

When a case is decided on the merits, the Court has no power to vary the judgment or decree, except by way of amendment under Sections 151 and 152 or by review under Order XLVII, Civil Procedure Code. The scope of amendment is very limited, being confined to clerical or arithmetical errors, accidental slips, etc. Review can be granted only on the limited grounds specified in Order XLVII.

6. **Inherent powers under Section 151, Civil Procedure Code**

The scope of Section 151, Civil Procedure Code, is frequently misunderstood and applications are made under that section, which do not properly fall within its purview. This section is intended to apply where there is no express provision in the Code or any other law regarding any particular aspect and the interest of justice requires the exercise of power on that aspect. The section is widely worded to enable Courts to do justice in proper cases, but it cannot be used so as to over ride the express provisions of any Statute. For instance, a suit which is barred by limitation, cannot be heard in the exercise of inherent powers under Section 151. But where there is no express provision of law on a particular point, inherent powers may be used in proper cases in the interest of justice. For instance, it has been held that when an application for execution is dismissed in default, it may be restored in the interest of justice on sufficient cause being shown, although there is no express provision of law for restoration of such an application dismissed in default.

Chapter 12

Special features of certain classes of cases

(a) *Cases under Punjab Customary law.*

1.Punjab Laws Act.

Custom **used to** form a dominant feature of the Civil litigation in Punjab, Haryana and U.T. Chandigarh. Section 5 of the Punjab Laws Act, 1872, lays down that in all questions regarding successions, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be custom, when there is any custom applicable to the parties, provided the custom is not contrary to justice, equity, or good conscience and has not been altered or abolished by any statute or declared void by any competent authority. In other cases, Muhammadan Law in the case of Muhammadans and Hindu Law in the case of Hindus, **used** to be applied. Customary law relating to succession, marriage, divorce, adoption, guardianship and minority relating to Hindus stands abrogated with enactment of Hindu **Code i.e.** The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956 and The Hindu adoptions and Maintenance Act, 1956.

2.Proof of Custom.

(a) The vast majority of the rural population in Punjab, Haryana & U.T. Chandigarh **used to** follow custom. It **was** the exception rather than the rule for the Hindu and Muhammadan Law to be applied in their entirety. The ascertainment of custom, when it is disputed, is often a matter of difficulty. The records of tribal custom (Riwaj-i-am) prepared by Government officers for the various Districts are helpful and are accepted *prima facie,* as good evidence of the customs stated therein *(See* 45 P. R. 1917-P.C.). Judicial decisions have also to a large extent defined customs in respect of various tribes, and the rules deduced therefrom are found summarised in a convenient form in Rattigan's "Digest of Customary Law."

3.Rights of Females.

The value of entries in *Riwaj-i-am* may, however, be small if these affect adversely the rights of females or any other class of persons who had no opportunity of appearing before the revenue authorities. A few instances may in such cases suffice to rebut the presumption of correctness attaching to such records. (Vide, I. L. R. 1941, Lah. 154 (P. C.), Subhani's case and (1955) 1 Supreme Court Reports 1191.

4.Migrants and Displaced persons.

In view of the wholesale migrations of population after the partition of the country, the question often **used to** arise whether a person is governed by the Customary Law of home of origin or of the land where he has settled down. The consensus of authority is that persons or tribes may be presumed to be governed by the customs of their original home and not by the customs of the land where they settled down unless it is shown that in any matters, they have adopted the customs of their new habitation. The presumption is, however, rebuttable on proof of special circumstances. See Rattigan's "Digest of Customary Law" and Mulla's "Hindu Law."

5.Personal Law.

When in any particular instance, no rule of custom can be found, the Court must fall back upon the personal law of the parties *(See* 110 P. R. 1906-F. B.)

6.Limitation in certain custom suits.

The provisions of Punjab Act I of 1920 which prescribe the limitation for suits relating to alienations of ancestral immoveable property and appointments of heirs by persons who follow custom, and Punjab Act II of 1920 which restricts the power of descendants or collaterals to contest such alienations or appointments should also be studied.

7.Law applicable to Muslims.

Attention is drawn to Act XXVI of 1937 which lays down that notwithstanding any custom or usage to the contrary, in all questions (save those relating to agricultural land) the rule of decision in case where the parties are Muslim shall be the Muslim Personal Law. In order to obtain the benefit of this Act, a declaration has to be obtained.

(b) *Money Suits*

Typical money suits.

1.(i) Some features of money suits deserve attention.

(ii) The typical money suit in the Mufassil is one between a creditor and an illiterate debtor. The suit is generally based on a running account consisting of petty items in the account book of the former with balances struck from time to time, or an agreement recorded in it with regard to larger loans borrowed on occasions of marriage, etc., and occasionally on a bond or pronote. Allegations of fraud, want of consideration, etc., are frequently made in defence and owing to the ignorance of the debtor, on the one hand and the frequent absence of regular accounts on the other, the cases require careful sifting. The examination of the parties themselves under Order X, Rule 2, Civil Procedure Code, before framing the issues is

generally very useful. When fraud, misrepresentation, undue influence, etc., are pleaded, the particulars thereof should be carefully elicited.

False entry.

2. (a) Where the creditor or some one at his instance has shown a higher amount in such documents than the amount actually advanced, the court shall disallow the whole claim with costs unless the creditor can satisfy the court that the mistake was accidental or bona fide (please see section 37 of Punjab Relief of Indebtedness Act, as amended by Punjab Act XII of 1940).

Punjab Regulation of Accounts Act.

(b) Special attention is drawn to the provisions of the Punjab Regulation of Accounts Act 1 of 1930. This Act applies generally to all loans advanced after the commencement of the Act which came into force on 1st July, 1931.

Suits on bahi account. Copy of the account.

3. When a suit is based on a *bahi* account, the account must be produced with the plaint. To avoid inconvenience to the plaintiff, he is allowed to file a copy, but the copy must be supported by an affidavit by the party producing it to the effect that it is a true copy or by a certificate on the copy that it is a full and true translation or transliteration of the original entry. No examination or comparison by any ministerial officer shall be required except by the special order of the Court. It should be noted, however, that although a copy is allowed to be filed, the original account must be produced (except when it is permissible to produce a certified copy, e. g., under the Banker's Books Evidence Act, 1891), later in the course of the trial when evidence is led in order to prove it.

Probative value of entries in accounts books.

4. Entries in books of account are relevant under section 34 of the Indian Evidence Act, if the books are shown to be regularly kept. Such entries are, however, not by themselves sufficient to charge any person with any liability and must be supported by other evidence. There may be cases where the plaintiff’s statement alone may be considered sufficient corroboration of these entries.

Bonds and agreements.

5. An agreement for the payment of a debt if attested by a witness would be liable to be stamped as a 'bond'. For definition of 'bond', please see section 2 (5) of the Indian Stamp Act. A document insufficiently stamped may be taken in evidence on payment of the deficiency in stamp and penalty as provided in section 35 *(ibid).*

Registration of bonds.

6. Registration is not obligatory in the case of simple bonds creating no charge on any immovable property. As regards bonds creating such a charge, section *17* of the Indian Registration Act should be consulted.

Thumb-mark and signatures.

7. When the thumb-mark or signature on a document is denied, it must be proved in the proper manner. As regards thumb-marks, the most convenient method is to obtain specimen thumb-marks of the person concerned in Court, if possible, and send the same together with the disputed thumb-mark for comparison by an expert to the Finger Print Bureau at Phillaur or Finger Print Bureau/Forensic Science Laboratory at Madhuban (Karnal, Haryana). The report of the expert must be supported by his testimony on oath or solemn affirmation. Such testimony can be conveniently obtained by issuing a commission for the purpose to the Civil Judge at Phillaur or Karnal. As regards proof of signatures, Sections 45-47 of the Indian Evidence Act may be consulted.

Proof of Consideration.

8. When the execution of document is admitted or proved, the onus will be shifted to the executant to prove absence of consideration, if he relies on any such plea. Section 12 of the Punjab Debtor's Protection Act, (Act No. II of 1936), however, provides an exception to this rule and should be carefully studied.

Payment by debtors.

9. Section 31 of the Punjab Relief of Indebtedness Act enables any person who owes money to deposit the same in court in full or part payment to his creditor. It is not necessary that the creditor should have filed a suit or taken any other steps to recover the debt. Interest ceases to run from the date of the deposit. A notice about the deposit should always be sent to the creditor.

10. Under Section 32 of the Punjab Relief of Indebtedness Act, 1934, the State Government has made rules called the Punjab Relief of Indebtedness (Deposit in Court) Rules, 1935 which shall apply to all deposits to be made under Section 31 of the said Act. The said Act at the Rules may be carefully studied.

11. Punjab Registration of Money Lenders' Act.

Attention is drawn to the Punjab Registration of Money Lenders' Act, 1938 (Punjab Act III of 1938) according to which suits and applications for execution by money-lenders are barred unless the money lender is registered and licensed. (section 3).

(c) *Pre-emption Suits.*

Prevailing law.

1.The law of pre-emption in Haryana is governed by Punjab Pre-emption Act, 1913 (as amended by Haryana Adaptation of Laws Order, 1968) and custom plays a comparatively minor part in it.

Deposit of security for costs.

2. In every pre-emption suit, the Court is bound to require the plaintiff before the settlement of issues to deposit a sum not exceeding one-fifth of the probable value of the property which is the subject matter of the suit or give security to that extent, within a specified time. If the plaintiff fails to comply with the order within the specified time, or such further time as the Court may allow, his plaint must be rejected. (Section 22 Punjab Pre-emption Act).

Court to enquire *suo motu* certain matters.

3. Order XX Rule 14 of the Code directs that a pre-emption decree shall specify a day on or before which the purchase (pre-emption) money with costs, if any, shall be paid into court. The courts should not fix a period of time for the deposit of the money but should mention a definite date. Care should further be taken to see that the specified date is not a day on which the Courts may be expected to be closed.

(d) *Suits by and against minors and persons of unsound mind.*

General.

1. The Procedure to be followed in the case of suits by or against minors is laid down in Order XXXII of the Code of Civil Procedure. Attention is invited to the additions and alterations made in these rules by the High Court.

Next friend and guardian *ad litem* defined.

2. A minor being legally incapable of acting for himself, the law requires that every suit by or against such a person should be conducted on his behalf by a person who has attained majority and is of sound mind. A person conducting a suit on behalf of a minor plaintiff is called his "next friend", while a person defending it on his behalf is called a guardian *ad litem* for the purpose of the litigation.

Permission to sue.

3.(a) Any person as described above who has no interest adverse to that of the minor, may institute a suit on behalf of a minor and no permission of the Court is necessary for the purpose. An exception to this general rule has however been made by sub-rule (2) of Rule 4 of Order XXXII. If the minor plaintiff has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor, unless the Court considers, for reasons to be recorded, that it is for the minors' welfare that another person be permitted to act.

(b) The next friend of a minor plaintiff can be ordered to pay any costs in the suit as if he were the plaintiff.

Minor may not be proceeded against *ex parte.*

4. A "guardian *ad litem*" for a minor must be appointed by the Court and the trial of the suit cannot proceed until such an appointment is made. The Court cannot proceed, or pass an order or decree, *ex-parte* against a minor.

An application for the appointment of a guardian *ad litem* of a minor and the affidavit filed therewith shall state:—

(a) Whether or not the minor has a guardian appointed under the Guardians and Wards Act, 1890, or the Hindu Minority and Guardianship Act, 1956 and if so, his name and address;

(b) the name and address of the father or other natural guardian of the minor;

(c) the name and address of the person in whose care the minor is living;

(d) a list of relatives or other persons who *prima facie* are most likely to be capable of acting as guardians for the minor;

(e) how the person sought to be appointed guardian or next friend is related to the minor;

(f) that the person sought to be appointed guardian or next friend has no interest in the matters in controversy in the case adverse to that of the minor and that he is a fit person to be so appointed;

(g) whether the minor is less than fifteen years of age.

Notice to minors, & relatives, etc.

5. No order should be made appointing a guardian *ad litem* unless notice is issued to the guardian of the minor appointed or declared by a Court (if any), or where there is no such guardian, to the father or other natural guardian, or where there is no father or natural guardian, to the person in whose care the minor is, and to the relatives and other persons given in the list, and the objections of such persons (if any) are heard. A notice to the minor is not essential under the rules (as amended) but should ordinarily issue when the minor is shown to be over fifteen years of age as he may in that case be able to take an intelligent interest in the selection of his guardian and the conduct of the proceedings.

Choice of guardian, appointment of court officers or pleader, funds for defence, and accounts to be kept. Duties of guardian.

6. In appointing a guardian *ad litem,* the following order of preference shall be observed :—

(i) If there is a guardian appointed or declared by a Court, he must be appointed unless the Court considers that it is for the welfare of the minor that some other person should be appointed. If any other person is appointed, the Court must record its reasons;

(ii) in the absence of a guardian appointed or declared by a Court, a relative of the minor best suited for the appointment should be selected;

(iii) in the absence of any such relative, one of the defendants should be appointed, if possible;

(iv) and failing such a defendant, a Court official or a pleader may be appointed.

It should be remembered that no person can be appointed to act as a guardian, *ad litem* without his consent. Consent may, however, be presumed unless it is expressly refused.

When a Court official or a pleader is appointed to act as a guardian the Court has power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purposes of defence. The Court official or a pleader should be required to maintain and produce accounts of the funds so provided and these should ultimately be recovered from such party as the Court may think it just to direct after the result of the suit.

The court official or pleader appointed by the Court as the *guardian-ad-litem* of a minor defendant, should to the best of his ability communicate with the minor and his relatives in order to ascertain what defence can properly be taken in the case and further try to substantiate that defence by adducing proper evidence.

Rejection of plaint where minor is not represented.

7. The plaint may be "taken off the file" and all orders made may be set aside, if a minor is not properly represented and the person filing the plaint or obtaining the orders whether a legal practitioner or not, may be liable to pay costs.

Appointment of guardian enures for appeal and execution.

8. When a guardian *ad litem* is appointed by a Court, the appointment enures for the whole of the litigation including appeals and execution proceedings arising out of the suit.

Compromise and agreement.

9. A next friend or guardian-ad-litem cannot enter into any compromise or agreement with reference to the suit without the leave of the Court expressly recorded in the proceedings. **An application for leave to enter into any agreement or compromise on behalf of the minor by a next friend or guardian should be accompanied by an affidavit of the next friend or guardian for the suit, as the case may be, and also if the minor is represented by the pleader, by the certificate of the pleader, to the effect that the agreement or compromise is, in his opinion, for the benefit of the minor.** The court should be satisfied after applying its mind to all the circumstances of the case that the compromise is really for the benefit of the minor and should record its opinion to that effect. A failure to observe these directions may result in the compromise or agreement being avoided at the instance of the minor.

Persons unsoundmind

10. Rules relating to suits by or against minors apply mutatis mutandis to suits by or against persons of unsoundmind.

e) *Suits by **indigent persons***

General.

1. Attention is called to Order XXXIII of the Code on the subject of suits by **indigent persons** and the steps which should be taken to protect the interests of Government in such cases. Application for permission to sue as indigent person has to be presented by the applicant in person unless he is exempted from appearing in Court.

Examination of plaintiff, and evidence for admission. Notice to Government.

2. Before a suit by **an indigent person** is admitted, the applicant or his authorised agent, when the applicant is exempted from appearance in Courts, should be examined regarding the merits of the claim and the property of the applicant. If it appears to the Court that the suit is not framed and presented in the manner prescribed by Rules 2 and 3 of Order XXXIII, or that the applicant is not **an indigent person**, or that he has fraudulently made away with any property within the two months preceding the presentation of the plaint, or that his allegations do not show a cause of action, or that he has entered into any agreement with

reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter or that the allegations made in the application show that the suit would be barred by any law in force at that time or that any other person has entered into an agreement with him to finance the litigation, the application must be rejected. If the Court sees no reason to refuse the application, it must fix a day (of which at least ten days' previous notice must be given to the opposite party and to the Government Pleader *on behalf of Government) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof, and can only pass final orders on the application after hearing the evidence and arguments brought forward on the day so fixed.

NOTE:- The Deputy Commissioner of each district in Punjab, Haryana and U.T. Chandigarh has been declared to be the “Government Pleader” for his district for purposes of Order XXXIII Rule 6, Civil Procedure Code (Punjab Notification No. I.C., dated Ist January, 1909)

Withdrawal of permission to sue as an indigent person.

3. Under the provisions of Order XXXIII, Rule 9, of the Code of Civil Procedure, the Court may, under certain circumstances, order **withdrawal of the permission to the plaintiff to sue as an indigent person.**

Copy of decree to be sent to Collector.

4. Order XXXIII, Rule 14, directs that where an order is made under Rule 10, 11, or 12, the Court shall forthwith forward a copy of the decree or order to the Collector so that amount of Court fees may be recovered from the person liable to pay the same as per order of the Court.

(f) Suits for Redemption and Foreclosure of Mortgages.

Notice to mortgagor, conditional sale in case of land not permitted.

1. The law regulating the procedure in cases where the mortgagee whose mortgage-deed also contains a provision for conditional sale, desires to foreclose the mortgage, is often misunderstood. Regulation XVII of 1806* is still the law on the subject. It will be seen that, whatever the terms of conditional sale, the mortgagee cannot enforce them till he has, by summary petition to the Court, caused notice to be served on the mortgagor to the effect that, if the latter does not pay the sum secured within one year, the mortgage will be held foreclosed. After the lapse of this year, and not till then, the mortgagee can sue for possession, as owner, or, if in possession, to be declared owner in accordance with the terms of the mortgage.

***Regulation No. 17 of 1806 [The Bengal Land (Redemption and Foreclosure) Regulation, 1806] was extended to all the territories which, immediately before the Ist November, 1956, were comprised in the State of Punjab, vide Section 4 of the Punjab Lands (Extension No. 3) Act 1957.**

Court competent to hear.

2.Only a District or Additional District Judge can deal with applications under Sections 7 and 8 of Regulation XVII of 1806. The procedure prescribed in the Regulation should be very strictly observed as otherwise the notice may have no legal effect.

Dismissal for default.

3. According to Order IX, Rule 9, of the Civil Procedure Code (as amended by the High Court), when a suit for redemption is dismissed in default under Order IX, Rule 8, the plaintiff is not precluded from bringing another suit for redemption of the mortgage.

Summary procedure for redemption.

4.The Redemption of Mortgages (Punjab) Act, 1913, provides a summary procedure for redemption of land through the Collector in the State. But any party aggrieved by the decision of the Collector, can under certain circumstances institute a suit in a Civil Court to establish his right (see Section 12 of that Act).

(g) Suits for Declaratory Decrees.

Issue as to possession.

1. The proviso to section **34** of the Specific Relief Act**, 1963,** lays down that a declaratory decree cannot be passed in a case in which other relief than a mere declaration can be sought. Hence in a suit for a declaration of title to immoveable property, where the defendant denies that the plaintiff was in possession of the property on the date of the suit, the Court should first of all decide this point. If it is found that the plaintiff was not in possession of the property on the date of the institution of the suit, his suit must fail unless the court, having regard to all the circumstances, allows the plaint to be amended.

All issues to be framed.

2. These instructions are not to be taken to imply that the whole of the pleadings should not be exhausted and issues drawn on all points of conflict between the parties at the first hearing, but that at the trial of the issues, the issue as to possession should be first tried and disposed of where this can be conveniently done.

(h) Suits for Accounts.

Account may be preferably taken after disposal of other points.

1. Order XX, Rule 16, of the Code directs that in all suits where it is necessary in order to ascertain the amount of money due to or from any party, that an account should be taken, the court shall before passing its final decree pass a preliminary decree directing such accounts to be taken as it thinks fit. This is the general rule though where the matter appears to be simple, the Court may pass a final decree straightaway.

Filing of accounts and evidence.

2. At the time of passing the preliminary decree, directing the rendition of accounts, the Court should decide the rights of the parties and as to who the accounting parties are and for what period the accounts are to be taken. In case of partners, their respective shares in the profits and loss of the joint business should be stated. Under Order XX Rule 17, the Court can also give directions, in the preliminary decree or by any subsequent order, as to the mode in which the accounts have to be taken or vouched and may in particular direct what books of

account shall be taken as *prima facie* evidence of the truth of the matters therein contained; with liberty to the interested parties to object to any portion of this account. In partnership cases, books of account should be treated as *prima facie* evidence of the truth of the matters stated therein under the general law and a special direction in this regard is not necessary.

Commission.

3. After the preliminary decree, the Court may go into the accounts itself but in cases where the accounts are lengthy or complicated, it may be helpful to issue a commission for the purpose. Rules 11 and 12 of Order XXVI indicate that the commission may be for examination and adjustment of accounts only or the commissioner may also be asked to report his opinions on the points referred for his examination. When the Court decides to issue a commission, his duties shall be stated with precision and particularity. The Commissioner is neither an arbitrator nor the Judge and the determination of any issue in the case cannot be delegated to him. The Commissioner is to place himself as an assistant to the Court so as to explain the accounts and give to the Court all the information which the accounts give in order to enable the Court to decide; unless he is also ordered to report under Order XXVI, Rule 12 (1) his own opinion on the points referred to for his examination.

Directions to Commissioner.

4. (1) If in any suit or matter it is necessary to take an account, the order or preliminary decree of the Court shall contain the following direction 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 period 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 a 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 the amount with respect 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 or 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 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. Evidence shall not be admitted with respect to an objection or surcharge not included in a statement of objection or surcharge.

(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 XXVI, 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.

(i) Procedure in "Hadd Shikni" cases.

Local inquiry.

1. In "Hadd-Shikni" suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court, it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:-

(a)by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under section 101 (1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;

(b)by appointing a local Commissioner; and

(c)by the Court itself making a local enquiry.

Enquiry by Revenue Officer.

2. An order of the Revenue Officer made under Section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice to, the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result, it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do not coincide with the limits of an estate.

Appointment of Commissioner.

3. Similarly the report of the local Commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it.

No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a local Commissioner. The appointment of retired Revenue Officers is to be preferred as these Officers have the spare time and the inclination for completing the work with expedition. A commission issued to a Revenue Officer in service necessitates the obtaining of permission of the higher authorities and this along with the fact that such Revenue Officers are usually busy often results in delay in the disposal of the case. The wishes of the parties in regard to the appointment of a particular individual as commissioner for local investigations should be taken into consideration while making such appointments.

Instructions for the guidance of Commissioners.

> On the motion of the Judges, the Financial Commissioners have issued the following detailed instructions for the guidance of Revenue Officials or Field Kanungos appointed as Local Commissioners in Civil suits of this nature.
>
> *(Financial Commissioner's Instructions)*

(i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 kadams, apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

(ii) In the report to be submitted by him, the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant portion of the current Settlement field map of the village showing the fields, if any, with their dimensions *(karu kan)* of which he took measurements, situated between the points mentioned in Instruction No. (i) above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.

(iii) If a question is raised as to the position of the disputed boundary according to the field map of the Settlement preceding the current Settlement that also should be demarcated on the ground, so far as this may be possible, and also shown in the copy of the current field map to be submitted under Instruction No. (ii).

(iv) On the same copy should be shown also, the limits of existing actual possession.

(v) The areas of the fields, abutting on the boundary, in dispute, as recorded at the time of the last Settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Field Kanungo's report with an explanation of the cause or causes of the increase or decrease, if any, discovered.

(vi) When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end, he should record the statements of all the parties to the effect that they have seen and understood the measurements that they have no objection to make to this (or if they have any objection he should record it together with his own opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when the report comes before the Court, one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

(vii)The above instructions should be followed by Revenue Officers or Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.

Note:- In these instructions, in place of 'last or current settlement', 'Consolidation of holdings' may be read so far as applicable. Financial Commissioner, Punjab and Financial Commissioner, Haryana have been asked to issue fresh instructions on the subject, keeping in view the consolidation of holdings and the village maps prepared at that time. Those instructions on receipt should be incorporated in place of the above instructions.

Chapter 13

Miscellaneous Notifications etc.

1. **General Remarks**

(i) All references in Government Notifications to the Chief Court of the Punjab or High Court of Judicature at Lahore or East Punjab High Court at Simla or **Punjab High Court** shall be construed as referring to the Punjab **and Haryana** High Court at Chandigarh.

(ii) All references in the Notifications to the Lieutenant Governor, Lieutenant-Governor in Council, Local Government and Governor in Council shall be construed as referring to Punjab Government or Haryana Government or U.T. Chandigarh Administration, as the case may be.

(iii) All references in the notifications to the Governor-General of India in Council, Governor-General of India, Governor-General in Council, Governor-General, Government of India shall be construed as referring to Central Government or the President as the case may be.

2. **Court Language**

(a) English has been declared to be language of the High Court *(Vide* Punjab Government Notification No. 316-G, dated 18th January, 1906).

(b) The language of the Courts subordinate to the High Court shall be:-

(i) Hindi in Devnagri script in Haryana and Punjabi in Gurmukhi script in Punjab.

(ii) For subordinate Courts in Union Territory Chandigarh, in addition to Hindi in Devnagri script and Punjabi in Gurmukhi script, Urdu has also been declared to be the language of the said Courts. (*vide* Chandigarh Administration Notification No. 330-IH(5)-77/4919 dated the 14th March, 1977).

(iii) In view of the Punjab Official Language (Amendment) Act, 2008, the work in all the civil and criminal courts, subordinate to the High Court in the State of Punjab shall be done in Punjabi for which Administrative Department of the State Government is to provide necessary infrastructure and training to the concerned staff.

Provided that English shall continue to be used for those Court purposes for which it was being used immediately before the 2nd October, 1962.

(Vide Punjab Govt. Notification No. 69 (243)-4J-62/42279, dated the 28th September, 1962)

3. **Powers under Sections 91 and 92 of the Code of Civil Procedure.**

The powers conferred by Sections 91 and 92 of the Civil Procedure Code on the Advocate-General may be exercised by all Deputy Commissioners in the States of Punjab, Haryana and Union Territory Chandigarh **.** (Punjab Government Notification No. 1-E., dated the 1st January, 1909).

4. **Extension of certain provisions of the Transfer of Property Act to Punjab.**

(a) Punjab Government, Revenue Department, Notification No. 1433-St. dated the 14th September, 1940-- In exercise of the powers conferred by section 1 of the Transfer of Property Act, IV of 1882, the Governor of the Punjab is pleased to direct that the provisions of section 129 of the said Act, shall be extended to the following areas in Punjab which would now include areas of Haryana and U.T. Chandigarh also, namely:—

(1) All Municipalities, and

(2) All Notified Areas notified under section 241 of the Punjab Municipal Act, 1911.

(b) Punjab Government, Revenue Department, Notification No. 1605-R (CH)-55/589, dated the 26th March, 1955……In exercise of the powers conferred by section 1 of the Transfer of Property Act, IV of 1882, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to extend the provisions of Section 54, 107 and 123 of the said Act with effect from the 1st April, 1955, to the entire State of Punjab(which would now include Haryana and U.T. Chandigarh). Punjab Government Notification No. 183-St dated the 27th April, 1935, is hereby cancelled.

5. **Appointment of Government Pleaders of Punjab.**

All the Legal Assistants of the Transport Department, Punjab have been appointed as Government Pleaders for the whole of the State of Punjab and have been authorized to appear, apply and act generally in relation to any suit by or against the Government of Punjab in the transport department in any court subordinate to High Court of Punjab and Haryana and in particular in Labour Tribunals and Motor Accidents Claims Tribunals in connection with the proceedings in which the Government of Punjab in the Transport Department is a party, on behalf of the State Government.

(Vide Punjab Govt. Notification No. S.O.34/C.A.5/1908/S.2/78 dated the 23rd June, 1978)

Chapter-14

Jurisdiction of Civil Courts

1. **Jurisdiction.**

(a) In view of Section 9 of the Code, Civil Courts have inherent jurisdiction to try all suits of civil nature excepting the suits for which their jurisdiction is either expressly or impliedly barred. Bar to jurisdiction of Civil Court should not be readily or lightly inferred. Even if jurisdiction of Civil Court is barred by any statute, if there is violation of provisions of the statute or principles of natural justice, civil court would get jurisdiction to try the suit as per precedents, but not regarding merits of the dispute, for which jurisdiction of civil court is barred. Under some enactments, Civil Judges can take cognizance of the proceeding only if specifically empowered in that behalf.

(b) Court also has to see whether it has pecuniary and territorial jurisdiction to try a suit. Provisions of Sections 15 to 21 of the Code may be kept in view.

2. **Jurisdiction of Civil and Revenue Courts.**

(a) If it is found that the suit relates to a matter of which only Revenue Court can take cognizance, the plaint should be returned for presentation to the competent Revenue Court.

(b) In view of Section 45 of the Punjab Land Revenue Act, a person considering himself aggrieved by an entry in a Record of Rights or Annual Record, as to any right of which he is in possession, may institute a suit for a declaration of his right under Chapter VI of Specific Relief Act, 1963, but Civil Court has no jurisdiction to order correction of such an entry in view of Section 158 (2)(vi) of the Punjab Land Revenue Act.

(c) If in a partition case, Revenue Officer declines to determine the question of title himself as if he were a Civil Court, suit would lie in the Civil Court to determine such question, but order of the Revenue Officer should be pleaded in the plaint and copy of the order annexed with the plaint.

(d) Only Civil Court has jurisdiction to determine the question of acquisition of occupancy rights and consequent acquisition of ownership rights.

(e) Suits relating to boundary disputes are triable by Civil Courts although decision of Revenue Officer as to delimitation cannot be questioned in Civil Court.

3. The issue of jurisdiction is always debatable. The above are some of the principles defying jurisdiction of the civil and revenue court. The same are not final and always subject to the developments of law in the subjects in question.

Chapter-15

Valuation of Suits

1. General

Value of a suit for purpose of court fee is determined under the Court fees Act, 1870 whereas value of the suit for purpose of jurisdiction is determined under the Suits Valuation Act, 1887 and the rules made thereunder. These two values are not necessarily same or identical and are rather frequently very different. Provisions of both the aforesaid Acts may be studied very carefully. Special attention is necessary to classification of suits in Section 7 of the Court-fees Act.

Value of the suit for purposes of court fee and jurisdiction has to be separately and specifically stated in the plaint. If not so stated the plaintiff should be required to do so, before summoning the defendant.

2. Valuation of suits relating to agricultural land.

If a suit relates to agricultural land in rural area, value of the suit for purposes of court fee and jurisdiction is very nominal in accordance with the aforesaid Acts. However, if a party to the sale deed files suit to challenge the sale deed, ad valorem Court Fee on sale consideration mentioned in the sale deed is payable, as per precedent.

3. Valuation of certain suits

Valuation of certain suits for purpose of jurisdiction is not expressly provided for in the Suits Valuation Act, 1887. Valuation of such suits is, therefore, left to judicial decision as the occasion may arise.

In some cases, e.g. suits under Section 28 of the Sikh Gurudwaras Act, 1925 or petitions under the Guardians and Wards Act, 1890, there is no necessity of fixing value for the purpose of jurisdiction because Courts for such cases are earmarked.

4. Value for purpose of Appeal

(a) Value of the suit fixed by the plaintiff or determined by the Court should always be stated on the face of the final judgment and decree in the suit, so that no inconvenience is caused to the litigants or Appellate Courts.

(b) Objection in appeal by either party to valuation of the case determined by the trial Court must be decided by the Appellate Court like any other question raised in appeal or

cross-objection. However, objection in this regard should also have been taken in the trial Court at or before framing of issues.

5. Rules Framed under the Suits Valuation Act

Rules framed by States of Punjab and Haryana under Section 3 of the Suits Valuation Act as well as by the High Court under Section 9 of the Act ibid should be carefully studied and kept in view. These Rules are available on High Court website under the head 'Rules and Orders' subhead 'Volume 1, Chapter 15 Rule 5'.

Rules framed by the States apply to all land generally, whether assessed to land revenue or not and without restrictions as to the classes of land or the local extent of their operation value of suit for purpose of jurisdiction shall not exceed the value of land or interest therein determined under the said Rules where applicable.

Rules framed by the High Court apply to certain classes of suits which do not admit of being satisfactorily valued. Value of such suits for purposes of court-fee and jurisdiction has to be determined under the said Rules.

Chapter 16

Arbitration

1 Arbitration and Conciliation Act, 1996.

The Arbitration (Protocol and Convention) Act 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961, (the Repealed Acts) stand repealed by Section 85 of the Arbitration and Conciliation Act, 1996 (New Act), but provisions of the Repealed Acts shall continue to apply to arbitral proceedings which commenced before the new Act came into force unless otherwise agreed to by the parties, and all rules made and notifications issued under the Repealed Acts shall be deemed to have been made or issued under the New Act to the extent they are not repugnant to the New Act.

2. Scheme under the New Act.

High Court has framed Scheme of 2003 regarding applications for appointment of arbitrators under Section 11 of the New Act. Application for this purpose has to be made to the Chief Justice of the High Court or any Judge of the High Court designated by him. No such application lies in Courts subordinate to the High Court. The scheme of 2003 can be accessed at High Court website under the head 'Rules and Orders' sub head Volume I, Chapter 16, Rule 2'.

3. Rules under the New Act.

High Court has, in exercise of powers conferred by Section 82 of the New Act framed Rules of 2003 in relation to proceedings before the Court under the New Act. The Rules inter alia provide for applications to be made under the New Act including applications for the enforcement of arbitral awards. Rules also prescribe fee payable on applications and appeals. Certain provisions of the Code of Civil Procedure have also been made applicable to such proceedings. The Rules of 2003 may be accessed at High Court website under the head 'Rules and Orders' sub head Volume I Chapter 16 Rule 3'.

4. Rules under the Repealed Acts.

Rules were framed under the Repealed Acts. The said rules are under the Repealed Acts, and also applicable to the cases under the New Act in so far as they are not repugnant to the New Act. The said Rules are available at High Court website under the head 'Rules and Orders' subhead 'Volume I Chapter 16 Rule 4'.

5. Fee of Arbitrator.

High Court has framed Rules of 2011 providing inter alia for preparation and maintenance of panel of arbitrators and the scale of their fees. The said Rules are available at High Court website under the head ‘Rules and Orders’ sub head ‘Volume I, Chapter 16 Rule 5’.

Chapter-17

Witnesses-Civil Courts

1. **Attendance of witnesses**

(a) Provisions of Order XVI of the Code of Civil Procedure relating to summoning and attendance of witnesses should be studied carefully. A Court can compel the personal attendance of any witness subject to certain restrictions of distance stipulated in Order XVI Rule 19 of the Code. Besides it, women who according to the customs and manners, ought not to be compelled to appear in public are also exempt from personal appearance in Court. Some dignitaries specified in Section 133 of the Code are also exempt from personal appearance in Court. On the ground of sickness or infirmity also, the Court has discretion to exempt personal appearance of any person. However, statement of any person as witness whose personal appearance in Court is exempt may be recorded by issuing commission. Witnesses can be served in the same manner as prescribed for service of defendants.

(b) If a witness fails to attend in spite of service of summons, his presence may be secured by issuance of bailable or non-bailable warrant of arrest and/or by issuance of proclamation and attachment of his property. On his appearance, fine may also be imposed on him after issuing show cause notice for not attending the Court. The Court should exercise caution while issuing warrant of arrest against public servant. A show cause notice to the defaulting public servant and intimation to his superior officer would produce the desired effect. However, in cases of pronounced or wilful default, coercive process may be issued against the public servant also. If the party summoning any defaulting witness is unwilling to take coercive action, the Court should refuse to issue any further summons to such witness.

(c) When witnesses are in attendance, every effort should be made to record their evidence promptly and not require them to attend again at any adjourned hearing as far as possible.

(d) Since certified copy of public document is per se admissible in evidence, concerned official with original public record should not ordinarily be summoned to prove the document or copy thereof, unless deemed absolutely necessary, e.g. when there is alleged tampering of the original document or authority concerned has declined to give certified copy of the document. Thus Courts should ordinarily refrain from summoning concerned officials with Registers of Births and Deaths or records of Municipalities or Property Tax Authorities or record relating to agreements of Rulers of former Indian States relating to their merger, integration or accession to the Indian Union or Patwari with Revenue record. Original record when summoned should also be returned after the witnesses relating to the

same have been examined and should not be retained in Court except when absolutely necessary.

2. **Remuneration**

(a) A party summoning a witness through Court is required to pay into Court necessary amount to defray the travelling and other expenses of the witness to and from the Court and also diet money for attendance of one day. Government is exempt from depositing the amount for summoning its own officials. Scale of expenses of the witnesses has been prescribed by the High Court (Note: the same have recently been revised appropriately). Expert witnesses are entitled to additional remuneration for performing work of expert character.

(b) A Government servant appearing as witness in official capacity may draw travelling allowance from Government as for a journey on tour. Expenses deposited by the party for summoning such witness shall be credited in the Treasury to the credit of the concerned Government under proper head of account. However, a Government servant appearing as witness in private capacity may receive the expenses deposited by the party from the Court. Attendance certificate shall be given by the Court to every public servant appearing as witness.

(c) If the witness is summoned from any other District, expenses of the witness should be remitted by money order at the cost of the party summoning the witness.

(d) A Process Server called upon to prove service of summons is not entitled to any allowance, such appearance being part of his ordinary duty.

3. **Government Instructions relating to government servants summoned to produce official documents.**

Instructions issued by the Government of India, Ministry of Home Affairs in respect of Government servants summoned to produce official documents, to all the State Governments were circulated with modifications by the Punjab Government to all Heads of Department, Commissioners of Divisions and Deputy Commissioners vide letter No.5591-J-54/20066, dated 31st August, 1954 and endorsed by the High Court to all District and Sessions Judges vide endorsement No.11321-Genl/XX, C.24, dated 15th September, 1954 and the same are useful for the Courts. The said instructions may be accessed at High Court website under the head 'High Court Rules and Orders' sub-head 'Volume I Chapter-17'.

Chapter 18

Suits by or against persons in Military Service.

1. While dealing with suits by or against persons in Military Service i.e. Army, Air Force or Navy, provisions of the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957 and of Order XXVIII of the Code of Civil Procedure have to be kept in view.

Pay and allowances of such persons are exempted from attachment in execution of civil decrees under Clause (j) of the proviso to Section 60(1) of the Code. Government of India has also issued a memorandum regarding arrest of such persons for debt, attachment of their pay and allowances and priority in disposal of their litigation (It is available on High Court website under the Head 'High Court Rules and Orders' sub head 'Volume-I, Chapter-18'). The same is only for the guidance of the Civil Courts. If any such person who is a party to a suit, cannot obtain leave of absence for prosecuting or defending the suit in person, he may authorise any person to prosecute or defend the suit on his behalf by way of written power of attorney which also does not require any court fee. Cases of such persons should be speedily disposed of on priority.

2. **Provisions of the Indian Soldiers' (Litigation) Act, 1925** are also required to be studied and kept in view while dealing with cases of persons in Military service. Rules framed by the Central Government under the said Act may also be studied. The same are available at High Court website under the head 'High Court Rules and Orders' sub head 'Volume-I, Chapter-18'.

Chapter 19

Suits by or against the Government and Public Officers in official capacity

1. General: Provisions of Sections 79 to 82 and Order XXVII of the Code require attention of the Courts in relation to suits by or against the Government and Public Officers in their official capacity.

2. Notice before institution of suit: Prior notice of two months under Section 80 (1) of the Code is required to be served on the Government or the Public Officer sought to be sued. If there is no plea in the plaint regarding service of such notice, the plaint may be returned for amendment if the person presenting the plaint states that notice has been given or the plaint may be rejected if the person presenting the plaint states that the notice has not been given. However, for urgent and immediate relief, suit may be instituted against Government or Public Officer, with the leave of the Court, without serving any such notice. But no relief, interim or otherwise, shall be granted except after giving reasonable opportunity of showing cause to the Government or the Public Officer. Courts are advised to pass specific orders on application for leave to file the suit without serving the requisite notice. If the leave is refused, the plaint should be returned for presentation after service of requisite notice.

3. Execution of decree:

Decree passed against Government or Public Officer in official capacity shall not be executed unless it remains unsatisfied for 3 months from the date of the decree.

4. Service of notice on Government Pleader: Government pleader in any Court appointed by the State shall be the agent of the Government for the purpose of receiving processes against the Government issued by the Court. Notifications have been issued by Governments appointing Government pleader for this purpose.

5. Priority: Suit in which Government is party should be given priority. However, reasonable time should be given for necessary communication with the Government through proper channel and for issue of instructions to the Government Pleader. Such time may be extended on request for sufficient cause.

6. Notifications: Punjab Government Notification No. 1(c) dated 1.1.1909 relating to appointment of Government Pleaders, Punjab Government Notification No. 1073-J-37/13015 dated 1.4.1937 and Punjab Government Notification No. 22963-Judicial dated 10.12.1917 relating to appointment of recognised agents, Punjab Government Notification No. 1073-J-37/13017/H/Judicial, dated 1.4.1937 relating to officers authorised to sign and verify the pleadings, Central Government (Ministry of Railways) Notification No. GSR 1138 dated

11.9.1961 relating to Officers authorised to sign and verify the pleadings and Central Government (Ministry of Railways) Notification No. GSR 1269 dated 07.10.1961 appointing recognised agents for suits relating to railway Administration may be studied and kept in view. These notifications are available on High Court website under the head ‘High Court Rules and Orders’ sub head ‘Volume I, Chapter-19’.

(Any other later notifications on the subject may be included)

Chapter-20

Utilization of the Services of Special Kanungo or Patwari Muharrir

1. Procedure for obtaining excerpts

A Special Kanungo or Patwari Moharrir has been appointed in all the Districts, so as to make information contained in revenue records easily accessible to the litigants and the Courts. Complete particulars of the excerpts to be prepared should be succinctly mentioned in the application by the concerned party. The application should be sent with the summons to the Special Kanungo or Patwari Muharrir. He should not be asked to attend the Court to tell him what is required to be done. The practice of calling him for this purpose must be discontinued. After preparing excerpt, the Special Kanungo or Patwari Muharrir should appear in the Court on the date fixed along with the original revenue record from which the excerpt has been compiled. He then appears in the witness box and on oath proves the excerpt as correct according to the original record brought by him. Counsel for the parties thus get opportunity of comparing the excerpt with the original record and of examining the witness on the required points.

2. Special Kanungo or Patwari Muharrir to be used for special purposes and at early stage.

Special Kanungo or Patwari Muharrir should be used for the purpose of obtaining information which is not readily available and not for other purposes. He should not be required to give opinions nor to give instances for or against alleged custom nor appointed as Local Commissioner nor he should be asked to prepare copies of pedigree tables or of histories of villages which can be easily obtained from the Copying Agency. He should also be summoned for the first date of hearing after framing of issues, if required by the plaintiff and for the first date of hearing fixed for evidence of defendant, if required by him.

3. Procedure for outlying Courts

The excerpt cannot be used as evidence unless proved. The Special Kanungo or Patwari Muharrir cannot be required to go with original records to outlying Courts, and without original records, the excerpt cannot be proved. Consequently, outlying Courts may issue interrogatories or open commission, ordinarily to Civil Judge (Senior Division), for examination of the Special Kanungo or Patwari Muharrir to prove the excerpt. The commission shall record the statement of the Special Kanungo or Patwari Muharrir on oath by summoning him with excerpt and also relevant original revenue record. The evidence so recorded along with excerpt shall then be transmitted to the concerned outlying Court.

4. **Fees**

Requisite fee (as fixed from time to time) for preparation of excerpt as well as expenses for appearance of the Special Kanungo or Patwari Muharrir as witness in the Court should be deposited in Court by the concerned party. The deposit shall be credited at once into the treasury under the relevant head.

5. **Instructions**

Instructions issued by the High Court regarding utilization of services of Special Kanungo or Patwari Muharrir should be carefully studied and followed in letter and spirit. The instructions, are available at High Court website under the head ‘High Court Rules and Orders’ sub-head ‘Volume-I, Chapter 20’.

Chapter 21

Commissions and Letters of request.

1. **Provisions of CPC**:

Provisions contained in Sections 75 to 78 and Order XXVI of the Code of Civil Procedure should be carefully studied and applied.

2. **Fees of the Commissioner**:

The Court shall fix reasonable amount of fee of the commissioner to be paid initially by the party seeking appointment of commission. The amount of fees can be varied (increased or decreased) subsequently by the Court depending on the work done by the Commissioner. The fee shall be paid to the Commissioner after the commission is duly executed.

3. **Commission for local enquiry and accounts**:

A Court should not issue a commission for local enquiry and accounts merely to save itself the time and trouble of examining witnesses. However, where it is necessary to appoint a commissioner to make local enquiry or to examine accounts, the order should specify the reason for appointing the Commissioner and the precise matter of the enquiry. Commissioner appointed to examine accounts should be a competent person in the particular form of accounts. It would be futile to issue commission to a person who is unable to even read the script in which the accounts are written.

Same person should not be habitually appointed as Commissioner for local inquiry. Petition Writers and other persons who hang about the Courts should not be appointed.

4. **Commission for partition of property**:-

After passing preliminary decree of partition, Court may issue commission for suggesting mode of partition of immovable property. In the case of agricultural land, a Revenue Officer or retired Revenue Officer should ordinarily be appointed as Commissioner whereas in other cases, any suitable person may be appointed as Commissioner.

5. Functions of Commissioner:

The Commissioner should function strictly according to the order appointing him. In case of local enquiry/spot inspection, the commissioner may prepare a map or plan and may observe existing physical features and boundaries and situation etc., and may submit his report accordingly including the map or plan, if any. Report submitted by the Commissioner may be read in evidence. The Commissioner may also be examined as witness at the instance of either party. The Court has no power to delegate to the Commissioner the final determination of any issue between the parties. The Court can take into consideration the report of the Commissioner, but must itself decide the issue.

6. **Court officials not to be appointed:**

Court officials should not ordinarily be appointed to make local investigations or to find market value of the property etc. Such commissions should be issued to retired Revenue Officers or professionals such as engineers, architects, accountants etc. Advocates may also be appointed as Commissioners for local investigation/spot inspection. Courts should exercise great care in selecting the suitable persons.

7. **Panel of Commissioners:**

Panel of Commissioners to record evidence shall be prepared by the High Court, or by the District Judge with approval of the High Court, for each District. The panel may also preferably include a lady lawyer. Any vacancy in the panel may also be filled accordingly. Appointment to the panel will initially be for two years which may be renewed for a further period of two years but not thereafter. However, it may be terminated earlier also. Names and addresses of the persons on the panel shall be circulated to all the Courts in the District.

8. Instructions to Commissioners:

The Court appointing a Commissioner for recording evidence shall issue necessary directions regarding place and time of holding the proceedings, the period for completion of the proceedings and whether original record is to be given to the Commissioner or only photostat copies are to be given. The Commissioner shall take proper care of the original

documents. The Commissioner may record remarks, if any, regarding demeanour of any witness. The Commissioner shall have no power to declare a witness hostile. If any party wants to declare a witness hostile before the Commissioner, the party should seek necessary permission from the Court.

9. **Reciprocal arrangement with Jammu & Kashmir:**

There is reciprocal arrangement under which Commissions or interrogatories can be issued by Civil Courts in Jammu & Kashmir to Civil Courts in remaining part of India and vice versa. Such Commissions should be exchanged through the District Judges concerned. Rules have also been framed by the High Court of Jammu & Kashmir in this regard which may be looked into in the case of need. Letter of request, instead of issuing a commission, to examine a witness may also be issued.

10. **Commissions and letters of request for examination of witnesses in foreign countries – party to the Hague Convention, 1970**.

(a) Where the witness to be examined resides in a country which is signatory to or has acceded to the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters, 1970 (in short, the Hague Convention, 1970), the Court shall issue letter of request for examination of the witness to the Central Authority of that country. Provision of next rule 11 shall, in so far as applicable, also apply to letters of request issued under this rule. However, if a commission is issued, there should be formal order appointing a stated person to execute the commission.

Note: Detailed information regarding countries which are signatories to this convention and the Central Authorities declared by the signatory countries can be accessed at website www.hcch.net or High Court website under the head 'High Court Rules and Orders' sub head 'Volume I Chapter 4'.

(b) Where the witness to be examined is an Indian National, the letter of request may be addressed to the diplomatic officer or Consular agent of India in that country and he shall be competent to take the evidence of that witness.

(c) The Hague Convention, 1970 contains all the details of the process for issuing letter of request for examination of witness and for execution thereof. The said Convention may, therefore, be studied carefully and followed as and when the necessity arises. All requirements of the said Convention should be meticulously complied with while issuing the letter of request.

11. **Examination of witnesses in other foreign countries:**

(a) Instead of issuing a commission appointing any individual to take the evidence of a witness in any other foreign country, letter of request addressed to the Judicial Authority or Court of the foreign country concerned should ordinarily be preferred being more appropriate method.

(b) Commissions and letters of request for Myanmar should be forwarded by the High Court direct to the High Court, Yangon.

(c) British Consular Officers in countries mentioned in the Schedule below may be appointed commissioners to take evidence of any witness in any of the said countries.

SCHEDULE

List of Foreign Countries in which British Consular Officers may take evidence, if tendered voluntarily: —

Argentine Republic.

Bolivia.

Brazil.

Bulgaria.

Columbia.

Costa Rica.

Cuba

Czechoslovakia.

Denmark.

Danzig.

Equador.

Estonia.

Finland.

France.

Greece.

Guatemala.

Honduras.

Hungry*

Italy (except Trieste) Lithuania.

Mexico.

Netherlands.

Nicaragua.

Norway †

Peru.

Poland.

Portugal.

Salvador.

Spain.

Sweeden.

United States.

Uruguay.

Venezuela.

Yugoslavia*

•From British Subjects only.

†In shipping matters only.

Note.—It should be noted that process to compel the attendance of witnesses will not be issued by the local courts.

(d) Where proper description of the foreign Judicial Authority/Court concerned is not known, the letter of request may be addressed to the 'Competent Judicial Authority' in the concerned country.

(e) Foreign Courts should not be asked to collect evidence themselves or to name and appoint experts to give evidence.

(f) Letters of request in duplicate with enclosures should be signed by the Judge or Registrar of Indian Court and bear official seal of the Court. A concise narrative of the case and particulars of relevant documents and the matter for which the witness is to be examined should be stated.

(g) Letter of request or commission should be issued only if the evidence of a person residing abroad is necessary. It should not be issued in cases of a comparatively petty nature.

(h) A sufficiently long date of not less than four months may be fixed in expectation of return of the execution of the commission/letter of request.

(i) Party concerned should be asked to deposit necessary amount (subject to adjustment later on) for execution of the commission/letter of request keeping in view the volume of work. The amount should be remitted directly by bank draft drawn in favour of the concerned Executing Court in the foreign country, for which necessary permission from the Reserve Bank of India by making an application to any of its offices may be obtained.

(j) Commission/letter of request should (unless otherwise provided) be forwarded through District Judge to the High Court. Documents should be routed through diplomatic representatives of India. However, in the case of Federated Malaya State, Iran and Nepal, processes may be forwarded direct by the Indian Courts.

(k) Commission or letter of request and accompanying documents should be translated in duplicate in English and in the language of the foreign country concerned and should be typed or computer printed on superior paper.

(l) If parties are to be represented at the examination of the witness, request be made in the letter of request/commission for permitting the local agents of the parties to appear and to submit questions to be put to the witness. In other cases, interrogatories and cross-interrogatories be sent. In appropriate case, authority may be given to engage a lawyer for summoning the witness and administering the interrogatories before the appropriate Court.

(m) Preparation of letter of request/commission should not be left to an official. The Presiding Officer should himself carefully examine the same for its accuracy and completeness before transmitting it to the High Court.

12. Special procedure in regard to particular foreign countries:

(a) **Pakistan and Bangladesh** : Commissions or letters of request for examination of a witness in Pakistan or Bangladesh can be addressed by Courts of India to the District Judge or the Muffasil Court concerned. Before transmitting the documents to the High Court, the District Judge should see that all necessary requirements are satisfied by the documents.

(b) Thailand: Letter of request should be addressed to the High Court of the Justice, Bangkok (or other Court having jurisdiction) for taking of evidence on commission. It should be sent through His Majesty's Legation of Consulate Agent or a Thai Foreign Officer. British Consular Officer in Thailand may also accept letter of request. The letter of request should be forwarded through the High Court.

(c) Iraq: Indian Courts are free to send processes for service to the Iraqi Ministry of Justice direct. Such documents should be accompanied by English translation.

(d) The provisions of rule 11 shall, in so far as applicable, also apply to commissions/letters of request issued under this rule.

13 **Letters of request and commissions issued by foreign Courts**.

(a) Letters of request for examination of any witness received from countries who are signatories to or have acceded to the Hague Convention, 1970 shall be governed by the provisions of the said Convention.

(b) Letters of request/commissions for examination of any witness received from any other foreign country shall be governed by Section 78 and Rules 19 to 22 of Order XXVI of the Code of Civil Procedure.

Chapter-22

Judgment and Decree

1. Early pronouncement of judgment

When the trial in Court is over, the Judge should proceed at once or as soon as possible to the consideration of his judgment. When the judgment is to be pronounced on some future day, the Judge should fix a date for that purpose with notice to the parties or their counsel. The judgment should be pronounced as early as possible. As per the instructions of the High Court, the judgment should be pronounced in civil cases within 30 days of conclusion of evidence of the parties and within 7 days of conclusion of final arguments. Certificate that judgments have been so pronounced within specified period should be given with monthly statements. Explanation should be given for judgments not pronounced within such period. Delay in pronouncing judgment gives rise to unnecessary suspicion or speculation and the impact of oral argument also fades with the passage of time and so also the memory regarding demeanour and characteristics of the witnesses. Early pronouncement of judgment is, therefore, advisable to arrive at correct and proper conclusion. The practice of not fixing a date for pronouncing judgment after conclusion of final arguments and keeping the file open ended and then writing some ante dated zimini orders while pronouncing the judgment belatedly, is strongly deprecated and should be discontinued at once, wherever it exists.

2. Directions regarding judgments

(i) Provisions of Section 33 and Order XX of the Code of Civil Procedure relating to judgment and decree may be carefully gone into and kept in view.

(ii) The judgment should be written in English language.

(iii) Every page of the judgment is to be signed by the Presiding Officer.

(iv) After the judgment has been written (type-written or computer printed), it should be pronounced, dated and signed in open Court, while pronouncing it.

(v) If the judgment is pronounced by dictation in open Court, the transcript thereof should, after making necessary corrections, be signed and dated by the Presiding Officer.

(vi) Operative part of the judgment should be clear and precise, specifically stating the relief granted and the person against whom it is granted and also necessary direction regarding cost.

(vii) All paragraphs of the judgment should be serially numbered to facilitate reference.

3. **Reference to evidence**

Wholesale reproduction of evidence in the judgment should be avoided. Either brief summary of the evidence may be given after referring to pleadings and issues or preferably relevant evidence may be referred to while recording reasons for findings on various issues. The grounds of decision should be stated concisely as is consistent with the introduction of all important matters. While referring to the evidence of a witness in the judgment, the reference should be by name as well as by number of the witness.

4. **Procedure on handing over charge**

Every Judicial Officer before handing over charge to proceed on leave or transfer, must sign a certificate that he has written and pronounced judgments in all cases in which he had heard arguments. Should an Officer be forced to lay down his charge suddenly and if he has not written and pronounced judgment in some cases in which he had heard arguments, he shall nevertheless, write the judgments in such cases and send them for pronouncement to his successor.

5. **Judgment to be written after disposal of cause list**

The practice of writing judgments during the Court hours in the early part of the day is to be deprecated except in case of exceptional urgency. Judgments may be written after the day's cause list has been completed.

6. **Information of cancellation of registered instrument.**

When any registered instrument has been adjudged void or voidable and the Court orders it to be delivered up and cancelled, the Court shall, as per requirement of Section 31(2) of the Specific Relief Act, 1963, send a copy of its decree to the concerned Registering Officer, so that he may note the fact of cancellation in his registration books.

7. **Civil powers to be disclosed**

Every Judicial Officer hearing or deciding a civil suit, proceeding or appeal should ensure that the record and the final order or judgment and the decree in the case shall disclose the civil powers which such Officer exercised in hearing or deciding such case. The civil powers referred to hereinbefore are as under:

(a) District Judge

(b) Additional District Judge

(c) Civil Judge (Senior Division)

(d) Civil Judge (Junior Division)

(e) Judge Small Cause Court

8. **Directions regarding Decree**

(i) Provisions of Order XX of the Code of Civil Procedure relating to preparation of decree may be carefully studied and complied with while drawing decree.

(ii) Decree may be preliminary or final. The decree should be framed by the Judge with most careful attention. It must agree with the judgment, be complete in itself and precise and definite in its terms. Nature and extent of the relief granted should be clearly and distinctly specified. The practice of writing 'decreed as prayed for' in judgment and decree is strongly deprecated and be discontinued forthwith.

(iii) In decree for possession of agricultural land, it should be stated whether possession is to be given at once or after the removal of any crop standing thereon or on or after any specified date.

(iv) Appellate decree should direct that the decree of lower Court is affirmed, varied, set aside or reversed and should also be complete in itself, specifying clearly and distinctly the relief granted.

(v) Decree should be drawn expeditiously and in any case within 7 days from the date of pronouncement of the judgment. The date of decree is the date of pronouncement of judgment, though drawn up on a later date.

(vi) Where sent or mesne profits are granted in a case, the amount and period thereof must be determined at the hearing and specified in the decree.

(vii) In case of compromise decree, the terms of compromise should be clearly stated in the decree or written compromise itself may be made part of the decree. Compromise decree can be passed between the parties even if it goes beyond the subject matter of the suit.

(viii) If during the course of the suit, any parties are added, deleted or substituted, it should be properly reflected in the decree sheet.

(ix) Order XX Rule 14 of the Code relating to contents of pre-emption decree should be carefully studied and complied. Sub-rule (2) relating to the adjudication of rival claims to pre-emption requires special attention.

(x) In decree for specific performance of a contract for sale or lease, if any amount is ordered to be paid by the plaintiff, the period within which the payment is to be made, shall be specified alongwith consequence of default.

(xi) Every decree must set forth the powers of the Officer passing the decree.

9. **Award of Costs**

(i) Provisions of Sections 35, 35A and 35B and Order XXA of the Code relating to costs should be kept in view while awarding costs in a suit.

(ii) Costs are in the discretion of the Court but the discretion is to be exercised judiciously. The general Rule is that costs follow the event i.e. the costs of the successful party are to be paid by the unsuccessful party. Order to the contrary should specify the reasons for the same.

(iii) Costs may be disallowed to successful party and he may even be saddled with costs of unsuccessful party. In this regard, Rule 4 of Order XXIV of the Code may also be looked into.

(iv) Provisions of Section 4 of the Punjab Regulation of Accounts Act, 1930 and Section 20 of the Punjab Relief of Indebtedness Act, 1934 also stipulate disallowing of cost to successful plaintiff in certain circumstances.

(v) Costs should be realistic. Costs include court fee stamps, process fee/service expenses, expenses incurred in procuring attendance of witnesses whether summoned through the Court or not, expenses of Commissioner, if any appointed and Pleader's fee as per Rules. The list is inclusive and not exhaustive.

(vi) Special or compensatory costs for false or vexatious claim or defence and for causing unnecessary delay may also be awarded in appropriate case. The mere failure of a party to prove its claim or defence may not justify granting of compensatory costs. The maximum amount of compensatory costs is `3,000/-.

10. **Award of Interest**

(i) Provisions of Section 34 of the Code and of the Punjab Relief of Indebtedness Act, 1934, the Punjab Regulation of Accounts Act, 1930 and the Usurious Loan Act, 1918 relating to interest may be carefully studied and kept in view.

(ii) Interest for pre suit period is governed by common law or specific statutory provision or mercantile usage or agreement between the parties.

(iii) Section 34 of the Code provides for pendente lite and future interest. Regarding pendente lite interest from the date of suit to the date of decree, discretion is vested in the Court to award interest at reasonable rate. The discretion should be exercised judiciously. Future interest from the date of decree till payment cannot be exceed 6% per annum except in the case of commercial transaction in which case rate of future interest may exceed 6% per annum but shall not exceed the contractual rate of interest or in the absence of contractual rate, the rate at which monies are lent or advanced by the Nationalized Banks in relation to commercial transactions.

(iv) Interest cannot be awarded on amount of costs.

(v) Contractual rate of interest should not be reduced for pre suit period merely on the ground of being excessive, unless it is found to be penal in nature or substantially unfair. However, the Court has discretion to reduce the contractual rate of interest even for pre suit period in appropriate case.

Chapter 23

Execution of decrees

1. General

It is aptly said that trouble of a litigant starts when decree is passed in his favour, although it is a disgrace to the system of administration of justice. It is the duty of all Judicial Officers executing decrees (including orders or awards executable as decrees) to remove this blot from the face of the system. The decree-holders face trouble in execution proceedings because the Judicial Officers do not pay necessary personal attention to the execution proceedings. The practice of leaving the execution proceedings to Execution Clerk or other official is strongly deprecated and is required to be discontinued forthwith. Judicial Officers must pay personal attention to the execution proceedings to ensure that the decrees are executed expeditiously in accordance with law. If the decree is not executed expeditiously, it results in great dissatisfaction to the decree-holder and brings disrepute to the system, besides resulting in miscarriage of justice.

Keeping the aforesaid in view, it has been stipulated that every working Saturday should be reserved exclusively for execution work, besides some other miscellaneous work, or a little of regular work if necessary, with the consent of parties or their counsel. If the Judicial Officers do not have much of the other work on that day, they would be able to devote time and attention to the execution work which is very essential.

2. The provisions of CPC

Provisions of Sections 36 to 74, 82, 135 and 135-A and Order XXI of the Code of Civil Procedure as amended by the High Court are required to be studied carefully and refreshed periodically and require careful consideration. Some of the said provisions which are important or are commonly unknown but useful would be dealt with in this Chapter.

3. Duty of District Judges

District Judges are responsible to ensure that proper arrangements are made for execution work by all Courts subordinate to them. They should also ensure proper distribution of execution work amongst the Subordinate Courts. They should also provide for execution of decrees passed by Officers whose Courts have ceased to function in the District and for execution proceedings already pending in such Courts. Ordinarily the Court passing the decree should be required to execute the same. District Judges should exercise close supervision and control to see that execution work is not neglected in Courts subordinate to them and also to see that execution petitions are not disposed of in perfunctory manner. If any Officer does so habitually, District Judge may report it to the High Court.

4. Stay of Execution

(i) The filing of an appeal from a decree is by itself no bar to its execution unless it is stayed by the Court which passed the decree or by the Appellate Court.

(ii) All applications for stay of execution should be treated as urgent.

(iii) Where an order for sale of immovable property in execution of a decree is made during pendency of an appeal from such decree, the Executing Court, on application of the judgment-debtor, is bound to stay the sale although it can impose such terms and conditions as to security or otherwise as it deems fit, until the appeal is disposed of (Order 41, Rule 6 (2) of the Code).

(iv) Where execution of decree is stayed by transferee Court under Order 21, Rule 26 of the Code to enable the judgement-debtor to obtain stay from the Court passing the decree or from Appellate Court, the judgment-debtor has to be required to furnish security or to comply with other suitable conditions.

5. **Money realised to be accounted for**

To prevent defalcation or embezzlement, Presiding Officer should personally verify by examining the previous warrants that any money previously realised by the execution bailiff or process server has been duly accounted for in the Nazar's account.

6. **Immediate execution before transfer of decree**

As per amendment made by the High Court in Order 21, Rule 10 of the Code, a decree-holder may apply to the Court within whose jurisdiction the judgment-debtor is, to order immediate execution on the production of the decree and an affidavit of non-satisfaction, pending the receipt of an order of transfer of the decree to that Court for execution.

7. **Transmission of decrees transferred**

In view of amended provision of Order 21, Rule 5 of the Code, where the decree is to be sent to another Court for execution, the Court which passed the decree shall send it directly to the transferee Court of competent jurisdiction whether or not situated in the same District or same State. The Transferee Court of competent jurisdiction is to execute the decree as if it had been passed by it. The transferee District Court may also send the decree for execution to any subordinate Court of competent jurisdiction.

8. **Certificate of execution**

The transferee Court is required to send a certificate showing the extent of execution or non-execution of the decree to the Court which passed the decree, alongwith circumstances of non-execution. Particulars of the extent of execution should be entered in the Register of civil suits of the Court passing the decree to avoid double execution.

9. **Register of decrees sent or received by transfer**

Entry of decrees sent or received by transfer is required to be made in the relevant prescribed Register with necessary particulars to maintain proper record thereof.

10. Mode of execution

(i) Out of various modes of execution provided by Section 51 of the Code, the methods specified in clauses (a), (b) and (c) i.e. by delivery of property, decreed, by attachment and/or sale, and by arrest and detention in civil prison alone are commonly resorted to and found adequate. Appointment of receiver for execution should be resorted to only in rare suitable cases having regard to the facts thereof.

(ii) In execution of decree for specific performance, restitution of conjugal rights or injunction, the period of attachment of property of judgment-debtor stipulated in Order 21, Rule 32 sub-rules (3) and (4) has been reduced to three months by amendment made by the High Court.

(iii) An Executing Court cannot go behind the decree or question the jurisdiction of the Court which passed it. The decree has to be executed as it stands. However, to ascertain its true meaning if the decree is ambiguous, Executing Court may refer to the judgment.

(iv) There is an exception to the aforesaid rule. Where the decree is nulity for lack of inherent jurisdiction in the Court passing it, its validity can be challenged in execution proceedings.

(v) In view of Section 47 of the Code, all questions relating to execution, discharge or satisfaction of the decree arising between the parties to the suit or their representatives have to be decided by the Executing Court and not by a separate suit. A purchaser of property at a sale in execution of the decree is deemed to be a party to the suit for this purpose and all questions relating to delivery of possession of such property to such purchaser are also to be decided by the Executing Court.

(vi) In view of new sub-section (4) of Section 39 of the Code, the Court passing a decree is not authorized to execute it against any person or property outside the local limits of its jurisdiction.

(vii) Provision similar to that of Section 27 of the Consumer Protection Act, 1986 is required to be made by amendment of the Code of Civil Procedure so as to expedite the

execution of decrees. Accordingly following amendment is proposed in Section 51 of the Code:

[(a) Proviso to Section 51 of the Code be omitted.

(b) Existing Section 51 be numbered as sub-section (1) thereof.

© Following sub-section (2) be inserted:

"(2) Where a judgment-debtor fails or omits to comply with imprisonment for a term which may extend to three years or in the five or with both. The Executing Court shall be deemed to be Judicial Magistrate First Class vested with summary powers for the purpose of the Code of Criminal Procedure. The offence may be tried summarily by the Executing Court".]

11. **Payment or adjustment not to be certified**

Sub-rule (3) of Rule 2 of Order XXI of the Code stands omitted by Section 36 of the Punjab Relief of Indebtedness Act, 1934 and, therefore, certification or recording of payment or adjustment in whole or in part satisfaction of the decree made out of Court is not necessary in the States of Punjab and Haryana and U.T. Chandigarh.

12. **No Stamp or Process Fee for deposit of decretal amount.**

No stamp duty shall be levied on application made by judgment-debtor to deposit money under a decree of Court nor process fee for issue of notice of the deposit to the decree-holder shall be recovered. The deposited money should be disposed of in accordance with Article 247 of the Civil Accounts Code, Volume 1, and paragraph 161 of the Punjab Treasury Manual.

13. **Scrutiny of execution application**

On execution application being filed, the Court shall scrutinize it to see that all requirements of Order XXI Rules 11, 11A, 12, 13 and 14 of the Code have been duly complied with. The application should state distinctly the mode in which the assistance of the Court is sought. The proceedings should be confined to that mode including amended mode, if any. Special care should be taken that for attachment of immoveable property, specification and verification required by Order XXI Rule 13 of the Code have been furnished. In case of agricultural land, copy of jamabandi may be ordered to be produced.

14. **Limitation**

According to the Article 135 of the Schedule to the Limitation Act, 1963, limitation period for execution of decree for mandatory injunction is three years whereas according to

the Article 136, limitation period for execution of any other decree or order is 12 years. However, there is no limitation period for filing application for execution of decree for permanent injunction. These provisions need careful attention of the Courts. Subsequent applications for execution have to be filed within 3 years of the date of final order passed on a previous execution application made to proper Court in accordance with law.

By Section 11 of the Punjab Debtors Protection Act, limitation period for execution application has been reduced to 6 years in certain cases specified therein and attention of the Courts is invited thereto. Attention of the Courts is also invited to Section 21(b) of the Punjab Relief of Indebtedness Act, 1934, imposing some restrictions on the power of a Civil Court to execute its decree in certain circumstances.

15. **Procedure on execution application.**

If the execution application is in order and within limitation, the Court shall cause the application to be entered in proper register and also note thereof being made in register of civil suits and then proceed to execute the decree in accordance with law Order XXI Rule 17(4) of the Code. Courts should not insist on filing of copy of decree with execution application filed in the Court passing the decree because necessary information regarding decree can be obtained from the register of civil suits and if necessary, by summoning and examining the original decree.

16. **Court to ascertain the amount due.**

When in the course of execution proceedings, it is necessary to ascertain the amount of money which is or remains due, the Judicial Officer shall himself ascertain the same and should not rely on mere notes or calculations made by ministerial officers.

17. **Several Decree-holders.**

Where execution application is filed under Order XXI Rule 15 of the Code by one or more out of several decree-holders, notice thereof should be given to the remaining decree-holders. Such an execution application should be for execution of the entire decree and for the benefit of all the decree-holders. However, where the decree is severally in favour of more persons than one, specifying what each is entitled to, there may be execution applications for partial execution by each decree-holder regarding his entitlement.

18. **Transferee**

If execution application is filed by transferee from the original decree-holder by an assignment in writing, notice thereof must be given to the transferor and the judgment-debtor, and the Court cannot grant the execution application unless it is satisfied, after giving opportunity of hearing to the transferor, and the judgment-debtor, that the transfer has in fact

been effected. Where such application is granted, name of the transferee applicant should be ordered to be recorded as decree-holder instead of the original decree-holder.

19. **Notice to judgment-debtor**

If execution application is made more than two years after the date of the decree and also in some other cases mentioned in Order XXI Rule 22(1) of the Code, the Court must first issue notice to the judgment-debtor, unless the case falls within proviso to the said sub-rule or service of notice is dispensed with under sub-rule (2) of the same Rule. The Court also has discretion to first issue notice to the judgment-debtor in appropriate cases even when execution application is filed within two years from the date of decree.

20. **Attention to Service of process**

Attention of the Court is invited to Rules 24 and 25 of Order XXI of the Code. If the process is not executed, the court should not blindly accept the report of the process. The Court should satisfy itself regarding reasons for its non-execution and should pass appropriate orders. It will eliminate unnecessary delay in the execution proceedings.

21. **Address for service**

In view Order XXI Rule 104 of the Code as added by the High Court vide notification No.567-G dated 24.11.1927, service on any party in execution proceedings shall be deemed to be sufficient if it is effected at the last registered address of the party under Order VI Rule 14A of the Code. However, it does not apply to notices prescribed by Order XXI Rule 22 of the Code.

22. **Period of pendency**

If the decree-holder has realized his instalment, or obtained the satisfaction asked for in the execution application, the execution application should be disposed of as satisfied or partly satisfied, as the case may be. Similarly, if the applicant does not take necessary steps to prosecute his execution application, it should be dismissed as unsatisfied or partly satisfied, as the case may be.

23. **Attachment of money due to judgment-debtor**

If money due to the judgment-debtor from some third person is attached in execution proceeding, such third person (garnishee) should be issued notice requiring him to remit the said due amount or the decretal amount, whichever is less, to the Executing Court for being paid to the decree-holder or to show cause why he should not do so.

24. Arrest and Detention

(i) Provisions of Sections 51, 55 to 59, 135 and 135-A and Order 21, Rules 21 and 37 to 40 of the Code and Section 34 of the Punjab Relief of Undebtedness Act, 1934 need to be studied and observed very carefully because arrest and detention of a person in prison in execution proceedings is a very serious matter impinging on his precious personal liberty. These provisions contain procedural safeguards and are required to be meticulously complied with before ordering arrest and/or detention of a person in prison in execution proceedings.

(ii) Section 56 of the Code provides for exemption of a woman from arrest or detention in execution of a money decree. Sections 135 and 135-A of the Code provide for exemption of Judicial Officers, Members of Legislatures and some other persons from arrest and detention in execution proceedings, in some circumstances only. Exemption or release from arrest/detention may also be claimed on the ground of illness as per Section 59 of the Code, but such person may be rearrested.

(iii) Section 55 (3) of the Code inter alia stipulates that a judgment-debtor, on being brought before the Court after arrest in execution proceedings, shall be informed that he may apply to be declared as insolvent and may claim discharge on satisfaction of necessary conditions.

Decree-holder has to pay subsistence allowance for the judgment-debtor from the time of arrest till being brought before the Court and also has to pay monthly subsistence allowance in advance for the current month in Court and subsequently to prison incharge for the period of detention in civil prison as required by Order 21 Rule 39 of the Code. Such amount paid by the decree-holder shall be deemed to be costs in the suit.

Or

Decree-holder has to pay subsistence allowance for arrest and detention of the judgment-debtor as detailed in Order XXI Rule 39 of the Code. Such amount shall be deemed to be costs in the suit.

(v) Warrant of arrest should be held in suspension/abeyance during the summer vacation. Decree-holder has to pay subsistence allowance for arrest and detention of the judgment-debtor as detailed in Order XXI Rule 39 of the Code. Such amount shall be deemed to be costs in the suit.

25. **Execution by delivery of immoveable property.**

(i) Provisions of Order XXI Rules 35 and 36 of the Code lay down the procedure for delivery of possession of immovable property in different situation, in execution proceedings. The same have to be followed.

(ii) Before issuing warrant of possession for the delivery of immovable property, the Court should ascertain from the decree-holder or his agent, the name of the person whom he

believes to be in possession of such property, to guide it in selecting the particular mode of delivery suitable to the case.

(iii) Where such property is in possession of judgment-debtor or any person claiming through or under him, he may be called upon to vacate the property and on his refusal, he may be removed from the property. If necessary, possession may also be delivered by breaking open any lock or bolt or door or by doing other necessary act for putting the decree-holder in possession, after giving reasonable warning to the occupants and time and facility to them to withdraw from the property. Necessary details of the manner of delivery of possession should be recorded in the report of the Bailiff on the warrant.

(iv) Where the decree is for joint possession of immoveable property, or if the property is in the occupancy of a tenant or other person entitled to occupy it and not bound by the decree to relinquish the possession, possession should be delivered by affixing a copy of the warrant in some conspicuous place on the property, and by proclamation by beat of drum to the occupant at some convenient place, the substance of the decree and the factum of execution of the warrant of possession, as required by Order XXI Rules 35 and 36 of the Code. Necessary details of the manner of delivery of possession, including the part of the property where copy of warrant was affixed and the place where the proclamation was made should be recorded in the report of the Bailiff on the warrant of possession.

(v) When a decree is for giving possession of agricultural land, the date on which possession is to be delivered should always be specified in the decree along with necessary order regarding standing crop, if any, on the land, but if it has not been done in the decree, it should be done in the warrant of possession to be sent to the Collector by the Executing Court. If it is not so done, the Collector should refer the matter back to the Executing Court for necessary instructions.

26. **Attachment**

(i) The law as to attachment is contained in Sections 60 to 64 and Order XXI, Rules 41 to 57 of the Code and Section 141 of the Punjab Land Revenue Act, 1887 which may be carefully gone into.

(ii) Changes made in Rules 53 and 54 of Order XXI of the Code by the High Court should also be noted carefully.

(iii)Standing crops, excepting Cotton and Sugarcane, as well as standing trees(apart from the land on which they stand) are now not liable to attachment or sale in execution of a decree vide Section 10 of the Punjab Debtors' Protection Act).

(iv) Proviso to Section 60 of the Code (as amended by the High Court) exempting certain properties from attachment and sale in execution of a decree needs special attention.

27. Mode of attachment of immovable property.

(i) Immovable property should be attached in accordance with the procedure laid down in Order XXI, Rule 54 of the Code. In case of land paying revenue, three copies of the prohibitory order shall be prepared whereas in other cases, only two copies are necessary. The details of property given in the schedule to the prohibitory order shall be identical with those given in the warrant.

(ii) The warrant together with the requisite copies of the prohibitory order shall be delivered to the Nazar who will depute the bailiff to make attachment by complying with all legal requirements. The bailiff shall return the warrant with detailed report stating the manner, date and hour of making the attachment.

(iii) Warrant of attachment of land paying revenue should be addressed and sent to the Collector as required by Section 141 of the Punjab Land Revenue Act, 1887 along with the copies of prohibitory Order. The Collector and his office then will be responsible for executing it in accordance with specified legal formalities. Entry of attachment shall also immediately be made in last jamabandi with red ink in the column of remarks. The Collector will return the warrant after execution to the Court concerned with endorsement certifying that all legal formalities for attachment have actually been complied with.

28. Scrutiny of attachment report.

It is impressed on the Civil Courts to carefully scrutinise the service/report of warrant of attachment before further action for sale of attached property is taken. The Court should satisfy itself that all legal formalities necessary for attachment have been complied with. Failure to comply with the same may sometimes constitute material irregularity and may thereby cause very serious trouble, loss or prejudice to the parties later on. The Reader or Ahlmad should be required to record a note on the file that all the legal formalities for attachment have actually been complied with. The Judge should carefully scrutinise such note and then pass appropriate order.

29. Precept

Section 46 of the Code provides for issuance of a precept by the Court passing a decree to another Court to attach the property of judgment-debtor Courts should be aware of this provision which is of great utility for decree-holder in appropriate case.

30. Effect of dismissal of execution petition

In view of amended rule 57 of Order XXI of the Code, Executing Court while dismissing the execution application is required to direct whether the attachment shall continue or cease and to also mention the period up to which the attachment shall continue or

the date on which the attachment shall cease. If no such order is passed, the attachment shall be deemed to have ceased.

31. Notifications

Notification No. 186/37 dated the 2nd October, 1940 issued by the Central Government and Notification No. 8298 J-42/489 dated the 5th January, 1943 issued by the Punjab Government in exercise of power conferred by Clause (l) of the proviso to 60 (1) of the Code as well as Notification No. SRO 1417 issued by the Central Government, Ministry of Finance (defence) dated the 15th June, 1956 under Order XXI Rule 48(1) of the Code may be looked into by the Courts.

32. Claims and objections

(i) Claims to attached property or objections to attachment of property made under Order XXI Rule 58 of the Code are frequently responsible for long delay in disposal of execution cases. Such objections are at times collusive or frivolous on the face of it and should be scrutinized with care and disposed of promptly.

(ii) Under proviso to Order XXI Rule 58 (1) of the Code, the Executing Court shall not entertain any such claim or objection in the circumstances mentioned in the proviso, with liberty to the aggrieved party to file suit to establish his alleged right.

(iii) When claim or objection is entertained by the Executing Court, all questions including questions relating to right, title or interest in the attached property have to be adjudicated by the Executing Court and not by a separate suit. The order of adjudication has the same force and is subject to the same conditions as to appeal or otherwise as if it were a decree.

<u>Custody and disposal of attached moveable property</u>

33. Provisions of C.P.C.

For proper custody and disposal of moveable property attached (other than agricultural produce), provisions of Order XXI Rules 43 to 43D of the Code as modified or added by the High Court lay down the necessary guidelines and are required to be kept in view.

34. **Valuable and portable property**

(i) Light and readily portable articles of all kinds and especially valuable property of small bulk, such as jewels etc., shall after seizure on attachment, be taken to the Executing Court and made over there to the custody of such officer as the Court may direct.

(ii) If such property is placed in the custody of the Nazir, he may place it in his cash chest and lodge in the outer room of Treasury, if it is open, as provided in Order 4(2) of the Punjab

Treasury Manual, and if the Treasury is closed, the Presiding Officer of the Executing Court must make other suitable arrangements for its safe custody.

35. **Form of Schedule of Property**

The Schedule of property to be annexed to the bond which is to be furnished by a custodian of attached moveable property must be in the following form:-

Schedule of property attached.

Schedule of property attached and made over to ……..,son of …….. of ……as custodian on the …… of ……..20……..

Detail of Property Estimated value.

Total…….

……

Sd/…… Sd/-….....

Witness. Custodian.

Sd/- -----Surety of Custodian

Sd/---------Surety of Custodian

Sd/…… Sd/-….....

Witness. Attaching Officer.

Sd/-….....

Judgment-debtor.

(To BE PRINTED ON THE REVERSE OF THE FORM)

Directions in regard to attached property.

I. No person can be compelled by the Court or attaching officer thereof to take charge of attached property as a custodian.

II. A custodian may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust, and delivering to the proper officer of the Court the property made over to him.

III. When any property is taken back from a custodian, he should be granted a receipt for the same.

IV. When property is made over to a custodian, schedule of property should be drawn up by the attaching officer in triplicate, dated and signed by-

(a) the custodian and his sureties;

(b) the officer of the Court who made the attachment;

(c) the person whose property is attached and made over; and

(d) two respectable witnesses.

One copy will be transmitted to the Court by the attaching officer and placed on the record ; one copy will be made over to the person whose property is attached and one copy will be made over to the custodian.

V. In regard to livestock the following directions apply :-

(a) The custodian is bound to take all reasonable and proper care of any live-stock entrusted to him.

(b) The custodian is responsible for the value of any live- stock which he fails to deliver to the Court or its authorized officer, when required so to do. If any live-stock is lost or stolen or dies while in the hands of a custodian, such custodian is bound to satisfy the Court that its loss or death was not due to his fault or neglect.

(c) If the judgment-debtor or any person claiming to be interested in any attached animal has been permitted to make arrangements for feeding the same (not being inconsistent with its safe custody, while it is under attachment),he may, in the case of poultry, milk cows, etc., take the eggs, milk, etc.

(d) A note shall be added on the Schedule to show the arrangements made for proper upkeep of the attached live stock i.e. whether it is to be fed by the custodian or by the judgment-debtor or by any other interested person, consistent with its safe custody.

36. **If property liable to deteriorate**

If the property is of such a nature that its value will deteriorate unless special arrangements are made for its storage or for carrying out some preparatory process during the period of attachment, the necessary arrangement shall be made and noted at the foot of the

schedule; provided that, if in such cases the judgment-debtor and decree-holder agree in writing to the immediate sale of the property, the officer shall proceed to sell it by auction forthwith, after giving such notice to intending purchasers as the circumstances of the case allow.

37. **Approval of Court**

(i) All arrangement under the aforesaid rules shall be made subject to the approval and confirmation of the Executing Court.

(ii) If the arrangements made by the Attaching Officer are modified by the Executing Court, a note of the modifications shall be made on the schedule and signed by the persons who signed the original schedule or a fresh schedule shall be prepared in the manner provided hereinbefore as the Court may direct.

38. **Release of Property**

If the Court directs the release of the property, in whole or in part, the articles released shall be made over to the person to whom the Court orders them to be delivered, by an officer of the Court, in the presence of the custodian, judgment-debtor and the witnesses mentioned; or, if their presence cannot be conveniently obtained, two other respectable witnesses.

39. **Reclamations**

If any reclamations are then made, a note of such reclamations shall be made at the time by the officer of the Court, and such note shall be signed by the person making them. The statements of the custodian and witnesses shall, likewise, be recorded on the subject by the officer of the Court, and shall be signed by such custodian and witnesses.

40. **Liability of Custodian**

A custodian of attached moveable property shall be liable to be proceeded against as a surety under Section 145 of the Code and shall, if criminal breach of trust is found, be also liable to be prosecuted for that offence.

41. **Property not left in local custody.**

If the attached moveable property is not left in local custody, the attaching officer should, as far as possible, be careful to attach the property in the presence of two respectables of the locality where the attachment is made and to draw up a schedule of the property attached and to procure their signatures to it.

Sale of Property

42. **References**

The provisions of the Civil Procedure Code, on the subject of sales are contained in Order XXI Rules 64 to 106 as amended by the High Court. Rules 64 to 73 deal with 'sale generally'; Rules 74 to 81, with 'sale of moveable property'; and Rules 82 to 106, with 'sale of immoveable property'. These provisions are required to be carefully studied and observed to avoid any irregularity or illegality in conducting the sale in execution of decree.

43. **Settlement of proclamation of sale**.

Rules for sale of revenue paying or revenue free land or interest therein are prescribed in the next part. In case of any other property, the Court shall fix a short date for ascertaining the particulars specified in Order XXI Rule 66(2) of the Code and for settling the proclamation of sale after giving opportunity of hearing to the parties or their Advocates.

44. **Enquiry as to encumbrances**

In case of immoveable property, the Court may, to prevent fraud, call upon the concerned Sub-Registrar to search his registers and report, before the next date of hearing, as to whether the property is subject to any encumbrance, provided that the decree-holder is willing to pay the necessary search fees at the rates prescribed by notification of concerned Government. The fee amount will be deposited in Court and then paid to the Registration Department by repayment voucher. The report of the Sub-Registrar shall be open to the inspection of the parties or their Pleaders, free of charge, till the settlement of the proclamation of sale.

45. **Determination of estimated value and settling the sale proclamation**

The Court shall after perusing the record, giving opportunity of hearing to the parties or their Advocates and making necessary enquiry, if any, determine the estimated value of the property to be sold and other particulars required to be specified in the proclamation of sale. The Court shall settle the proclamation of sale specifying as clearly and accurately as possible the matters required by Order XXI Rule 66 (2) of the Code, in the following form:-

Description of property including name of village and boundaries, if necessary	Name of judgment debtor	Extent of interest of judgment-debtor in the property, so far as it has been ascertained	Detail of encumbrances, if any, to which the property is liable so far as they can be ascertained by	The amount to be recovered	Estimated value of the property to be sold	Any other known particulars bearing on the nature and value of the property

		by the Court	the Court			

Settling the proclamation of sale is very important part of the proceedings and necessary details should be ascertained and noted with care. This will remove the basis for many objections to the sale at a later stage.

The Court may not necessarily give its own estimated value of the property in the proclamation. However, the proclamation should include the estimated value, if any, given by either or both the parties.

The proclamation when settled shall be signed by the Judge and shall be made in the manner prescribed by Order XXI Rule 67 of the Code.

46. **Information obtained after proclamation**

If after the proclamation has been published, any matter, which is material for intending purchasers to know, is brought to the notice of the Court, the Court shall cause the same to be notified to intending purchasers at the time of auction sale.

47. **Costs of Proclamation**

The costs of aforesaid proceedings shall, in the first instance be paid by the decree-holder but they shall be charged as costs of execution, unless the Court otherwise directs.

48. **Grant of time to Debtor to arrange private alienation**

Attention is drawn to Order XXI Rule 83 of the Code enabling the Court to postpone the sale of immoveable property at the instance of the judgment-debtor to enable him to raise the decretal amount by private alienation of the attached property or any other property. This power should be exercised with caution, so that the judgment-debtor may not delay the execution with mala fide intention. This provision does not apply, if sale of the property is ordered in the decree itself to enforce a mortgage of, or charge on, the property.

49. **Adjournment of Sale**

The sale shall be held at the time and place specified in the proclamation. However, sale may be adjourned or stopped as provided by order XXI Rule 69 of the Code. unless the Court adjourns it to a specified day and hour, or the officer conducting the sale (with the leave of the Court, if the sale is made in or within the precincts of the Court-house) adjourns it for reasons which must be duly recorded . Whenever a sale is adjourned for a longer period

than thirty days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

50. **Purchase by Decree-holder, Mortgagee or Officer connected with auction**

Attention is drawn to Order XXI Rule 72 and Rule 72A of the Code, prohibiting the decree-holder and the mortgagee of immoveable property respectively from bidding for or purchasing the property without the express permission of the Executing Court and to Order XXI Rule 73 of the Code prohibiting an Officer connected in any manner with sale from directly or indirectly bidding for, acquiring or attempting to acquire any interest in the property sold. In case of permission being granted to mortgagee, reserve price, which shall not be less than the gross amount due under the mortgage, has to be fixed.

The Court may dispense with the deposit of earnest money if the decree-holder is the purchaser and is entitled to set off the purchase money.

51. **Disbursement of purchase money**

Purchase money deposited in Court on sale of immoveable property shall be retained by the Court till expiry of thirty days from the date of the order confirming the sale. If no notice of appeal having been presented against the said order is received during that period, the purchase money, after deducting the commission, may be paid to the decree-holder to the extent of the decretal amount. If any such appeal is preferred, the purchase money shall not be so paid, until the appeal is decided. However, it may be paid if the decree-holder gives the necessary security to repay the same on being required to do so. The balance amount, if any, is to be disbursed to the judgment-debtor subject to the same conditions.

52. **Applications to set aside the sale.**

Applications to set aside sales are frequently made under Order XXI Rule 90 of the Code. Such applications can be made by the decree-holder, the purchaser, any person entitled to ratable distribution or by any person whose interests are affected by the sale. The grounds to set aside the sale are restricted, being only material irregularity or fraud in publishing and conducting the sale and substantial injury suffered by the applicant on account thereof. Both these conditions must be satisfied to set aside any sale. No sale can be set aside on any ground which the applicant could have raised before the proclamation of sale was drawn up.

The purchaser also has additional right under Rule 91 to make an application to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property at all. However, this provision does not apply when the judgment-debtor had some, however small, interest in the property.

53. **Confirmation of sale**

Where property is sold pending final disposal of any claim to the attached property or objection to the attachment thereof, the Court should not confirm the sale, until the final disposal of such claim or objection. In other cases, if no application to set aside the sale is made or the application if made is disallowed, the Court must confirm the sale. An order confirming or setting aside a sale is appealable but cannot be challenged by way of separate suit.

54. **Refund to Purchaser**

When a sale is set aside, the purchaser is entitled to repayment of his purchase money with or without interest as the Court may direct. The money should be recovered and repaid in the execution proceedings. The purchaser should not be required to file a separate suit for the same.

55. **Certificate of sale**

When a sale of immoveable property has become absolute, the Court shall grant a certificate stating the property sold and the name of the purchaser person, who, at the time of the sale, is declared to be the purchaser. This certificate should be in the prescribed form, and must bear the date of the confirmation of the sale, and be stamped, at the expense of the purchaser, in conformity with the provisions of the Indian Stamp Act, 1899 as applicable. When the terms of the certificate have been finally settled, the draft shall be signed by the Judge and placed with the record of the execution proceedings, and the certificate granted to the purchaser (which should be in exact conformity with such draft) shall be engrossed on the stamp paper, free of copying charge. Instances have occurred where the purchaser, to avoid stamp duty, has not taken his certificate, but has asked merely for a draft certificate to be appended to the file of execution, his idea being to use the draft certificate in proof of his title to the property purchased. Subordinate Courts are warned to guard against such subterfuges. No draft certificate should in any case be drawn up until the stamp duty required by law has been paid.

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation.

In case of immovable property, a copy of the certificate shall be sent to the Registering Officer concerned to be filed in his supplementary Book No.1. This copy should be drawn up with permanent black ink or registration ink or type written/computer printed, on the prescribed form.

56. **Court officials for conducting sales**

(i) Sales in execution of decrees shall ordinarily be conducted by the Court Auctioneer. The District Judge may direct by special order that the sale in a particular case or cases shall be conducted by the Nazarat Staff.

(ii) At the head quarters of each sub-division in a district, save as otherwise directed, the District Judge shall, with the prior approval of the High Court, appoint a Court Auctioneer to conduct sales in execution of decrees within the limits of the sub-division. The Official Receiver shall ordinarily be appointed as the ex-officio Court Auctioneer for the sub-division at the District headquarters.

(iii) Every Court Auctioneer shall give security in the sum of `20,000, over and above any security he may have given as Official Receiver, for the satisfactory discharge of his duties. This security shall be furnished to the satisfaction of the District Judge. The rules which govern the taking of security from Official Receivers shall, mutatis mutandis, apply also to Court Auctioneers.

57. **Procedure for return of sale warrant**

(i) A warrant of sale shall not be delivered to the Court Auctioneer direct by the Court ordering the sale but shall be forwarded to him through the process-serving Agency. After the sale, the warrant and connected Papers shall be returned by the Auctioneer to the process-serving Agency which shall forward it to the court concerned.

(ii) **Sale under supervision of Court Auctioneers**: All sales of property whose estimated value exceeds `50,000/- shall be conducted under the general supervision of the Court Auctioneer. Sales of property whose estimated value is `50,000/- or less may be conducted by agents of the Court Auctioneer. In all cases, the Court Auctioneer is responsible for proper compliance with all legal requirements and for all the acts of his agents.

(iii) **Deposit of sale proceeds into Government treasury:** The Court Auctioneer shall himself deposit into the treasury or State Bank of India all sums realised at auction sales conducted by him or his staff, on the first working day after the sale.

58. **Commission**

(i) Commission at the following rates shall be deducted from the proceeds of sales under this Chapter:—

(a) If the sale proceeds do not exceed rupees one lac, at five per centum.

(b) If the sale proceeds exceed rupees one lac, at five per centum on rupees one lac and one per centum on the remainder.

(ii) If the sale is conducted by the Court Auctioneer, 80 per cent of the Commission will be paid to him and 20 per cent will be paid into the Treasury to the credit of Government. All incidental expenditure shall be met by the Auctioneer. The amount of commission of the Court Auctioneer shall not, however, exceed rupees fifty thousand in respect of one sale.

(iii) If the sale is conducted by the Nazarat staff, the whole of the commission shall be credited to Government and nothing shall be paid to the officer conducting the sale. In such cases, the expenses incurred in conducting the sale, including the cost of advertisement, must not exceed the amount of commission.

(iv) Expenses of custody etc. : The expenses incurred in the care, custody and keep of attached property (as taxed by the Court) shall be a first charge on the sale proceeds thereof, after the deduction of the commission mentioned above.

59. **Charges of Court Auctioneers**

(i) No commission shall be paid on the proceeds of sales set aside for a material irregularity in publishing or conducting the sale. The commission on the proceeds of a sale set aside for any other cause shall be paid by the person at whose instance or for whose benefit the sale is set aside and the Court Auctioneer shall be entitled to his share of such commission.

(ii) If a sale is set aside, the purchase money shall be refunded in full to the Auction Purchaser unless it is set aside at his instance and for his benefit in which event the commission due under the preceding rule shall be deducted from the sum to be refunded.

(iii) Where a sale is set aside after the commission has been paid to the Court Auctioneer, the court shall recover it from him and shall refund it to the Auction Purchaser if he is entitled to the refund of the whole of the purchase money. In such cases, the Government share of the commission shall also be refunded.

(iv) In cases in which auction sales are ordered, but not completed or do not take place at all, the court auctioneer shall be paid only his actual expenses, provided that if there has

been, in the opinion of the Court, clear negligence on the part of the auctioneer (e.g., failure to advertise leading to absence of bidders), he will not be entitled to any compensation. The amount of actual expenses if held due under this rule will be determined by the Court and shall be paid by the decree-holder or the judgment-debtor as the Court may direct.

60. **Conduct of sale by Nazarat Staff**

(i) Where the District Judge directs that a sale be conducted by the Nazarat Staff, the proper officer to conduct the sale is:-

(a) Where the sale is ordered by a Court of small Causes—the Departmental Officer or such other officer as the Court may appoint.

(b) Where the sale is ordered by a Court other than a Court of Small Causes:

(1) The Civil Nazir, for all sales ordered by Courts located at District Headquarters and for all other sales in which the value of the property to be sold is estimated to exceed `50,000/-.

(2) The Naib Nazir of the Court ordering the sale, for other sales.

(ii) In every case in which the Civil Nazir is not required, under these directions or the directions of the District Judge, to conduct the sale in person, such sale may be conducted under the orders and upon the responsibility of the Civil Nazir, by the Naib Nazir deputed by him for the purpose.

(iii) When it is desirable to have the sale conducted at the place where the attached property is situate and the property is of small value, and a Nazir or Naib Nazir is not available for the duty, an execution bailiff may be deputed to conduct the sale.

(iv) A process-server shall not be employed to conduct a sale without the authority in writing of the Officer in charge of the Process-serving Agency concerned. Such order shall not be made unless no other officer is available and the value of the property to be sold is estimated at `10,000/- or less

(v) The District Judge may issue instructions, consistent with these directions, for the further regulation of the conduct of sales by the Civil Nazir and his establishment.

61. Sale of guns or arms

Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Arms Act, 1959, and Rules thereunder, 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 by the Police to enforce the requirements of the Arms Act.

Sale of Revenue paying or Revenue free land.

62. **Law applicable**: Provisions of Section 141 of the Punjab Land Revenue Act, 1887 and the Debtors' Protection Act should be looked into while dealing with applications for sale of revenue paying or revenue free land. However, the land which has been built upon ceases to be 'land' within the meaning of Section 141 ibid, notwithstanding that it is assessed to land revenue.

63. **Objections to be decided by Civil Courts**: Powers of Civil Courts to deal with objections made under Section 47 or Order XXI, Rule 58 of the Code are the same irrespective of whether the objections are received by the Court directly or through the Collector. Objections under Section 9 of the Debtors' Protection Act are also to be decided by the Civil Court and not the Collector.

64. Returns: Civil Courts and Collectors are required to furnish quarterly returns in prescribed forms regarding the aforesaid cases.

65. Money specifically charged on land: In cases where the decree is for recovery of money specifically charged on the land ordered to be sold, the warrant of sale has to be issued by the Civil Court. According to Section 141 of the Punjab Land Revenue Act, 1887, orders for sale of land have to be addressed to the Collector or such Revenue Officer as the Collector may appoint. The warrants for sale in such cases may, therefore, after arrangement with the Collector, be sent direct to the Tehsildar or such other Revenue Officer as the Collector may appoint who will return them after execution to the Court concerned through the Collector. Duplicate copies of the warrants for sale should also be sent directly to the Collector for information.

66. Execution of decrees against agriculturists:

It is reiterated that proviso to Section 60(1) of the Code relate to exemption of certain properties, including those of agriculturists, from attachment and sale in execution. Besides it, under Section 61 of the Code, State Government has declared that entire fodder crops including gram, oats, chari, maize and gwar, 1/3rd or 20 maunds, whichever is more, of foodgrains, and 1/3rd of all other crops of an agriculturist judgment-debtor shall, subject to certain other provisions, be exempt from liability to attachment or sale in execution of decree, so as to provide for the support of the judgment-debtor and his family and for the cultivation of the land. Provisions of Section 70 of the Punjab Land Revenue Act, 1887 read with Section 88 of the Punjab Tenancy Act, 1877 also provide for exemption of some produce of the land and cattle of the judgment-debtor from attachment or sale in execution of

decree. Section 35 of the Punjab Relief of Indebtedness Act, 1934 also provides for exemption of some property of agriculturist or his family from attachment or sale in execution of decree. Standing trees and standing crops except cotton and sugarcane are also exempt from attachment or sale in execution of decree as per Section 10 of the Punjab Debtors' Protection Act. Section 9 of the Punjab Debtors' Protection Act also provides for exemption of some property in specified circumstances but not when the debt has been expressly charged by way of mortgage. All these provisions should be kept in view while dealing with execution application against agriculturist judgment-debtor. However, there is no bar to the sale of land belonging to an agriculturist.

(ii) Attachment and sale of the land and its produce will be carried out by an order addressed by the Civil Court to the Collector or such Revenue Officer as he may appoint in this behalf.

67. Payment by judgment-debtor and receipt by decree-holder

(i) Receipts should invariably be furnished by decree-holders for money paid or goods delivered through the courts in satisfaction of decrees.

(ii) Amount tendered by a judgment-debtor in full or part payment of a decree shall be received by the concerned Court (competent to execute the decree) whether the decree-holder has taken out execution or not and whether he is actually present in the Court or not.

(iii) If the decree-holder is present in the Court at that time, the money so received by the Court shall be made over to him upon his giving a receipt (duly stamped where required), and the receipt shall be filed with the proceedings.

(iv) If the decree-holder is not present in Court at that time, the amount paid by the judgment-writer shall be made over by the Court to the Nazir/Naib Nazir who shall forthwith deposit it in the Treasury and notify to the Court the number and date of entry in the deposit register. A corresponding entry will be made in the Court's record. However, if the Treasury is closed when the money is paid, it should be placed in cash chest of Nazir in the manner provided in Rule 34(ii) for valuable property.

(v) An unstamped acknowledgement will be given to the judgment-debtor by the concerned Nazir. Notice of the deposit shall be given to the decree holder.

(vi) When the decree-holder claims the sum so deposited in the Court, the Court shall give the claimant, on identification, a cheque on the Treasury for the said amount and shall note thereon the date of deposit and the number in the deposit Register. An unstamped receipt containing amount of the cheque, its date and number, and the deposit number and date shall be taken from the decree-holder and placed on record.

(vii) The cheque mentioned in the preceding sub-rule shall be presented to the Treasury Officer for payment and the receipt of the payee, endorsed thereon, shall be sufficient acquaintance for the Treasury Officer who will forward the endorsed cheque to the Accountant General as his voucher for the withdrawal of the amount from the deposit.

(viii) Where a decree-holder has been placed in possession of immoveable property in execution of decree, the dakhalnama or acknowledgement taken from him is not required to be stamped either under the Court Fees Act or the Stamp Act; not being an acknowledgement of receipt of money or other moveable property, it is not a 'receipt' within the meaning of Section 2(23) of the Stamp Act.

68. Resistance by Judgment debtor etc.

(i) Provisions of Order XXI, Rules 97 to 106 of Civil Procedure Code are required to be carefully studied and applied in appropriate cases. Non-observance of these provisions properly may give rise of avoidable litigation.

(ii) According to Order XXI, Rule 98 of the Code, if the holder of a decree for possession of immovable property or purchaser thereof at sale in execution is resisted or obstructed, the executing Court can now take action not only when the resistance or obstruction was occasioned by the judgment-debtor himself or his transferee pendente lite bound by the decree but also when it was caused by some other person at his instigation or on his behalf. Detention ordered under this rule shall be at public expense(as provided by amendment made by the High Court).

69. Dispossession of third person.

If any person not bound by the decree is dispossessed of any property in execution, whether by decree-holder or by the purchaser thereof in execution, he may apply to the Executing Court to establish the right claimed by him in the property. Such an application may be moved even before such third person is actually dispossessed of the property in execution proceedings. If such applicant was/is in possession of the property on his own account or on account of some person not bound by the decree, possession of the property should be restored to such person by the Executing Court and if not already dispossessed, he shall not be liable to be dispossessed in such execution. Such question is to be adjudicated in the execution proceedings and not by separate suit. Order determining such question has the same force and is subject to the same conditions as to an appeal or otherwise as if it were a decree.

70. Costs in execution proceedings

(i) Fees of counsel: Fees of counsel in execution cases should be allowed on the scale laid down for the same in Chapter----------, unless there is reason to the contrary.

(ii) **Costs of clothing and bedding**

The cost of clothing and bedding, if supplied by the decree-holder to a civil prisoner committed to prison in execution of a decree, being returnable to the decree-holder at the

time of the prisoner's release (as per Jail Manual), should not be included in the costs of the execution.

(iii)Subsistence expenses.

Money spent by the decree-holder for the subsistence of the judgment-debtor arrested in execution shall be included in the costs.

(iv)**Compensatory costs**. In view of Section 35-A of the Civil Procedure Code, the Executing Court may award compensatory costs in case of false or vexatious claim or defence in execution proceedings, to the opposite party.

71. Reciprocal arrangements with foreign countries: Section 44-A of the Code provides for execution by Courts in India of decrees passed by Superior Courts in reciprocating foreign countries as may be declared by the Central Government and vice versa. This arrangement is confined to only decrees for payment of money, not being sums payable as taxes, fines or penalties etc. The arrangement does not extend to arbitration award even if it is enforceable as decree or judgment. This arrangement stands extended qua following countries by notifications of the Central Government issued under Section 44-A of the Code.

(a) United Kingdom:- Extended to the High Court in England, the Court of Sessions in Scotland, the High Court in Northern Ireland, the Court of Chancery of the Country Palatine of Lancaster and in Court of Chancery of the country Palatine of Darham. Vide Central Government Notifications Nos. 47 to 51 dated the 25th February, 1953 and Ist March, 1953 and also extended to the House of the Lords and the Court of appeal vide Ministry of Law GSR 201 dated 13.3.1958.

Similarly, the Government of Great Britain have vide the Reciprocal Enforcement of Judgments (India) Order, 1953, extended Part I of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 to the territories of the Union of India and the following Courts shall be deemed to be superior courts of the said territories for the purposes of Part I of the said Act:-

(i) All High Courts and Judicial Commissioners' Courts.

(ii) All District Courts.

(iii) All other courts whose civil jurisdiction is subject to no pecuniary limit provided that the judgment sought to be registered under the said Act is sealed with a seal showing that the jurisdiction of the Courts is subject to no pecuniary limits.

(b) **Myanmar**: Reciprocal arrangements have been made between India and Myanmar in the matter of execution, vide Government of India Notification No. 286-36-Judicial, dated the

27th March 1939, and Government of Myanmar (then Burma)Notification No. 141, dated the 7th March, 1939.

According to these notifications the following courts have been declared to be superior Courts for the purposes of Section 44-A:-

Myanmar:

(1) High Court at Yangon.

(2) All District Courts in Myanmar,

(c) **Aden**: Extended to Supreme Court of Aden by Government of India, Ministry of Law Notification NO. SRO 183 dated the 18th January, 1956.

Fiji:

(d) Reciprocity has also been established between Fiji and India vide Central Government Notification No. SRO 959 dated the 22nd March, 1954.

(e) **Singapore**: Extended to Supreme Court of Singapore vide Government of India, Ministry of Law Notification No. SRO 1867 dated the Ist September, 1955.

(f) **Federation of Malaya**: Extended to High Court and Courts of Appeal of the Federation of Malaya by Government of India, Ministry of Law Notification No. SRO 4 dated the 3rd January, 1956.

72. Reciprocal arrangements with Jammu & Kashmir: The Code of Civil Procedure, 1908 does not extend to the State of Jammu & Kashmir although it is part of India. However, there is reciprocal arrangement under Section 43 of the Code with Jammu & Kashmir vide Section 44 of the Jammu & Kashmir Code of Civil Procedure, 1977 under which Government of Jammu & Kashmir has issued Notification vide Order No. 914-C of 1954 dated the 10th July, 1954. Accordingly, the decree passed by any Civil Court in India (outside Jammu & Kashmir) may be executed in Jammu & Kashmir as if it had been passed by a Court of the said State.

Chapter 24

Transfer of cases

1. Transfer of part heard cases or cases in which evidence stands concluded.

Section 24 of the Civil Procedure Code provides for transfer of suits, appeals or other proceedings pending in subordinate Courts. This power may be exercised at any stage of the case. However, a case which is part heard or in which evidence has been concluded should not ordinarily be transferred from one Court to another.

2. Courts requesting for transfers:

(i) In making request to Superior Court for the transfer or

withdrawal of any case, civil Courts should state their reasons for making the request.

(ii) Whenever a suit or appeal comes before a Judge in which he is personally interested or in which the decree or order appealed against was passed by himself, a report should at once be made to the Superior Court concerned with a view to the case being transferred to another Court.

(iii) A subordinate Court while sending a case to the District Judge with request for its transfer should give the parties the date for appearance before the District Judge.

3. Parties to be informed of the date for appearance on transfer: If orders for transfer of any case are passed, the parties present should be informed of the transferee Court and the date for their appearance in that Court.

4. Records to be sent immediately to the Transferee Court: When a case is transferred by administrative order from one Court to another, the Presiding Officer of the Court from which it has been transferred shall be responsible for informing the parties regarding the transfer, the transferee Court and the date for appearance there. The District Judge passing the order of transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order, the Court passing the order should fix a date for appearance of the parties in the transferee Court.

5. Transfer of appeal: District Judge can, without reference to the High Court, transfer or withdraw any appeal pending in the Court of Additional District Judge in his District. An appeal once transferred under the orders of the High Court cannot be retransferred by District Judge without further orders from the High Court.

6. Separate record of transfer applications: Applications for transfer of civil cases along with proceedings therein should form files separate from the records of the main cases sought to be transferred. The records of such transfer applications should be separately consigned to the record room. The original order on transfer application should be kept in record thereof and a copy of the order should be sent to the Courts concerned.

However, cases transferred by a Court of its own motion or on administrative grounds should not be entered in any Register nor it is necessary to keep any statement of the cases so transferred or to make separate record of the transfer proceedings. The original order of transfer (instead of a copy) may be sent to the Court concerned.

Chapter 25

Appeals and Revisions

1. Provisions of CPC: Provisions of Sections 96 to 108 and Orders XLI to XLIV of the Code of Civil Procedure relating to appeals may be looked into carefully.

2. Classes of Appellate Courts: Presently there are two classes of Appellate Courts in the States of Punjab and Haryana and U.T. Chandigarh i.e. the High Court and the Court of District Judge (which includes the Court of Additional District Judge).

Note:- Under Section 39 (5) of the Punjab Courts Act, 1918, the High Court may invest the Court of Civil Judge (Senior Division, or Junior Division) with powers to hear appeals. However, at present, no such appellate power has been conferred on any Civil Judge.

2. Forum of Appeal:

(i) An appeal from a decree or appealable order passed in any original suit by any Civil Judge (Senior Division or Junior Division) lies to the District Judge.

(ii) An appeal from a decree or appealable order of a District Judge or an Additional District Judge lies to the High Court.

3. **Second Appeal**: In view of Section 100 of the Code, second appeal to High Court from a decree passed in appeal by any Subordinate Court lies only if the High Court is satisfied that the case involves a substantial question of law. In view of Section 102 of the Code, no second appeal shall lie from any decree when the subject matter of the original suit is for recovery of money not exceeding ` 25,000.

4. **No appeal against consent decree**: In view of Section 96 (3) of the Code, no appeal shall lie from a decree passed with the consent of parties.

5. **Appeal from Preliminary decree**: According to Section 97 of the Code, if appeal has not been preferred from a preliminary decree, such decree shall not be questioned in any appeal preferred from the final decree.

6. **Appeal from orders**: The orders which are appealable are specified in Section 104 and Order XLIII Rule 1 of the Code and no other orders are appealable.

7. **Copies to accompany the memorandum of appeal**

(i) The memorandum of appeal shall be accompanied by a copy of the judgment and decree appealed against. However, if two or more cases are disposed of by one judgment and

two or more appeals are filed against any decree covered by the judgment, the Appellate Court may dispense with the filing of more than one copy of the judgment.

(ii) In second appeals, the memorandum of appeal shall also be accompanied by a copy of the judgment and decree of the Court of first instance, unless the Appellate Court dispenses therewith.

(iii) When some issues are disposed of at first and the rest by the final judgment, it is sufficient to attach a copy of the final judgment.

(iv) In view of amendment made by the High Court, the Appellate Court may permit the appeal to be filed with true copies duly authenticated by an Advocate as correct.

8. **Exclusion of time spent in obtaining copies**

Since according to Section 12 of the Limitation Act, 1963, the time requisite for obtaining a copy of the judgment and decree appealed from is to be excluded for computing the limitation period for filing appeal, the Court or the Copying Agency should be careful to endorse on the copy the following dates:

(a) The date of presentation of the application for a copy.

(b) The date on which the copy was examined and attested i.e. was ready for delivery.

(c) The date of delivery or dispatch of the copy.

The time since after the copy was ready for delivery till the delivery was actually taken is not to be excluded for computing limitation period for filing the appeal.

Appellate Courts should be careful to notice any delay in furnishing the copies and to take appropriate action.

9. **Reception and examination of appeal and service of processes and address for service.**

(i) The general Rules regarding the reception of plaint in Chapter 2, examination of plaint in Chapter 3 and service of summons on defendant in Chapter 4 of this Volume shall, so far as may be, apply mutatis mutandis to the reception and examination of appeal and service of notice on respondent.

(ii) Latest registered address of a party filed under Order VI Rule 14A of the Code during the course of trial holds good for service of notice in appeal also and such address should be stated in the memorandum of appeal.

10. **Admission**

The appeal, if found proper and complete in all respects (including Court fee, prescribed form, limitation period etc.), shall be admitted for hearing and shall be registered in the register of appeals by concerned official.

11. **Preliminary hearing**

(i) After hearing the appellant or his counsel, the Appellate Court may (without or after calling for and perusing the records of the lower Court) dismiss the appeal by recording reasons, even without issuing notice to the respondent. Decree shall be drawn accordingly.

(ii) If on the date fixed for preliminary hearing, the appellant or his agent/counsel does not appear, the appeal may be dismissed in default. In that event, the appeal should not be decided on merit.

(iii) If the appeal is not so dismissed, notice of the appeal shall be ordered to be issued to the respondent and record of the trial Court shall be requisitioned.

(iv) The notice to respondent shall be accompanied by a copy of the memorandum of appeal. The appellant shall file the requisite number of such copies immediately after notice of the appeal has been ordered to be issued to the respondent. However, the Court may also dispense with service of notice on a proforma respondent or on a respondent who was not represented in the Lower Court.

(v) The Court should be slow in dismissing an appeal for default or in proceeding ex parte against the respondent and every reasonable endeavour should be made to decide the appeal on merits as far as practicable. If either party does not appear on first call, the file may be kept aside and taken up again after other work is finished.

12. **Amendment after admission**

After admission and registration of appeal, the appellant cannot urge any ground of objection not set forth in the memorandum of appeal except with the leave of the Court. Application for such leave should ordinarily be in writing, preferably before the date fixed for hearing, so as to avoid unnecessary adjournment.

13. **Filing of appeal in Trial Court**

According to Order XLI Rule 9 of the Code, the Court passing a decree under appeal is required to entertain the memorandum of appeal and to endorse thereon the date of its presentation and to register it in the register of appeals. However, even if such memorandum of appeal is not filed in the said Court, the appeal filed in the Appellate Court will not become defective one merely on this ground.

14. **Special power**

Special attention is invited to Order XLI Rule 33 of the Code whereby an Appellate Court has been given the fullest power to pass any decree or make any order as the case may require, even in favour of any respondent or party although such respondent or party may not have filed any appeal or cross-objection. Such power may also be exercised in respect of all or any of the decrees passed in cross suits or two or more decrees passed in one suit although an appeal may not have been filed against such decree. However, such power has to be exercised only in rare and exceptional case and for very strong reasons to be recorded by the Appellate Court.

15. **Prompt disposal of miscellaneous appeals**

Appeals from orders in pending proceedings should be disposed of as promptly as possible, so as not to delay those proceedings unnecessarily. Notice to respondent in such appeal may be served on his counsel, if any, in the Lower Court so as to avoid delay in service of notice on the respondent and to avoid consequent delay in disposal of the appeal. Such service of notice on the counsel shall be legal and valid service.

Record of Lower Court in such case, if requisitioned, should not be retained till the next date of hearing and should be sent back forthwith when the appeal is adjourned, and may be requisitioned again, to be received by the appellate court only a day before the next date of hearing, so that in the meanwhile, proceedings may not be held up in the Lower Court for want of its records.

16. Judgement and decree

(i) Provisions of Chapter 22 relating to judgment and decree of Trial Court shall, so far as may be apply mutatis mutandis to judgment and decree of First Appellate Court.

(ii) The judgment should be complete in itself and should contain a concise account of the case, the points for determination and the decision thereon with reason therefor and should clearly state the relief granted to the appellant when the decree appealed from is reversed or varied.

(iii) Judgment of the First Appellate Court may not ordinarily be as detailed as that of the Trial Court. However, the Appellate Court should give intelligible and clear summary of the evidence considered by it and the reasons why it is worthy of consideration. If any ground of appeal is withdrawn or is not pressed at the hearing, this fact should invariably be mentioned in the judgment.

(iv) The finding of fact arrived at by the Court of First Appeal is, as a rule, final and cannot be challenged in Second Appeal except when it raises substantial question of law within the purview of Section 100 of the Code. The Court of First Appeal should, therefore, realise its responsibility and see that the finding of fact is clear and precise. The judgment should indicate that all relevant evidence, oral as well as documentary, has been considered. Second appeals may have to be admitted if necessary finding of fact is either vague or non-existent or important evidence has been ignored, misread or misconstrued.

(v) Confusion frequently arises from the use of the words 'appellant' and 'respondent'. Appellate Court should use these terms with addition of the word 'plaintiff' or 'defendant', as the case may be, or the latter terms alone may be used.

(vi) The decree of the Appellate Court shall contain the number of the appeal with date of institution and date of decision, the names and description of the parties, clear statement of the relief granted or other determination of the appeal, and an order as to costs with amount thereof.

17. **Remand**

(i) Whenever a case is remanded, the Appellate Court ordering the remand shall fix a date on which the parties shall appear before the Trial Court and shall inform the parties or their counsel who are present.

(ii) When the case is remanded under Order XLI, Rule 23 or Rule 23- A of the Code, it must be restored to its original number on the Register of the Trial Court and shall be considered as a pending suit. However, if the case is sent under Order XLI, Rule 25 of the Code, it should remain on the Register of the Appellate Court and shall be considered as a pending appeal.

(iii) When the case is remanded under Order XLI, Rule 23 or Rule 23- A of the Code, formal decree is not to be drawn by the Appellate Court.

(iv) When a case is sent under Order XLI, Rule 25 of the Code, reasonable time should be fixed for return of the finding by the Lower Court. The Lower Court should make every effort to submit the finding by the date fixed, but if this is found to be impracticable, it should apply at once for extension of time, stating the reasons and the expected date of submitting the required finding.

(v) Appellate Court should give reasonable time to the parties to file objections, if any, against the finding submitted by the Lower Court under the preceding sub rule. The objections, if any filed, shall be determined along with the decision of the appeal.

18. Additional Evidence

Additional evidence may be allowed to be led in appeal within the four corners of Order XLI, Rule 27 of the Code. The grounds on which additional evidence may be allowed in appeal are specified in the said provision which should be carefully studied and kept in view while dealing with application for additional evidence in appeal. The test for admitting such additional evidence and the manner of exercise of discretion in this behalf have been laid down in various judgments by High Courts and Supreme Court.

19. Statement of serving Officer

In the case of summons from the High Court, the Court serving the summons shall record the statement of the process server as to such service on solemn affirmation and shall verify the same with its signature before returning the summons.

20. Security in revision cases

(i) When in an application for revision filed under Section 44 of the Punjab Courts Act, 1918 or under Section 25 of the Provincial Small Cause Courts Act, 1887 or under Section 115 of the Code of Civil Procedure or under Article 227 of the Constitution of India, it is ordered by the High Court that the applicant shall give security in any Subordinate Court for the due performance of the decree or order sought to be revised, such Subordinate Court shall accept from the applicant any amount or security which he may tender for the purpose, and shall retain the same in its custody pending the further order of the High Court.

(ii) The Subordinate Court shall, on the request of the applicant or on receipt of a percept from the High Court, certify in writing to the High Court what has been done by the applicant, with its own opinion, if required, as to the sufficiency of the security tendered.

(iii) Same practice may be followed while taking security in pursuance of an order made under Order XXI Rule 26 (3) or under Order XLI Rule 5 of the Code of Civil Procedure.

(iv) The preceding provisions shall apply, so far as may be, when a person intending to file an application for revision in the High Court, has performed, or deposited the amount of, the decree or order sought to be revised, or tendered security for performance thereof.

21. **Appeals and applications presented after limitation period**

(i) The concerned official shall examine the memorandum of appeal to see that requisite copy of judgment and decree has been attached and whether the appeal has been presented within limitation period.

(ii) If the appeal appears to be presented after limitation period or there is doubt whether it is within limitation period, the concerned official shall make a note of the calculation regarding limitation period.

(iii) The calculation regarding expiry of limitation period is to be made irrespective of the last day being closed day for the Court. The official shall also bear in mind that the date on which the application for copy is made and the day on which the copy is ready for delivery will be reckoned separately as one day each, unless both events occur on the same day.

(iv) When copies of judgments are despatched by post, in accordance with rules, the period intervening the completion and despatch of copies must be excluded in computing the limitation period.

(v) On the date fixed for preliminary hearing, the court shall see that if the appeal has been presented after expiry of limitation period, it is accompanied by an application, supported by affidavit, for condonation of delay setting forth the facts on which the appellant relies for this purpose. Such an application, if not presented with the memorandum of appeal, may also be filed subsequently.

(vi) If the Court is of opinion that assuming all the facts stated in the application for condonation of delay to be true, the explanation for delay is insufficient, the Court shall dismiss the application and reject the appeal as barred by limitation.

(vii) If the application is not dismissed under the preceding sub-rule, notice thereof shall be given to the respondent. The parties shall be given opportunity of giving evidence for and against the facts stated in the application, by affidavit or oral testimony and documents.

(viii) The Court after giving opportunity of hearing to the parties shall then decide the application for condonation of delay. If the delay is condoned, the Court shall proceed with the hearing of the appeal as per procedure laid down hereinbefore. If the delay is not condoned, the Court shall dismiss the application and reject the appeal as time barred.

(ix) Where no application for condonation of delay is filed either with the memorandum of appeal or subsequently, the Court shall dismiss the appeal as time barred without considering the merits of the appeal.

(x) Similar procedure should be observed, so far as may be, in respect of applications filed under Section 5 of the Limitation Act, 1963, for condonation of delay in other cases e.g. applications for review, for readmission of appeals under Order XLI Rule 19, for restoration of suits under Order IX Rule 4 or Rule 9, for setting aside of ex parte decree under Order IX Rule 13, of the Code of Civil Procedure.

22. **Transmission of Orders of Appellate Court to Lower Court.**

(i) The appellate Court will send a copy of its judgment to the concerned Lower Court.

(ii) The Appellate Court will attach a form mentioning the date of dispatch of judgment while sending back the original record.

(iii) The Record-Keeper will maintain a running list of the cases prepared from the above form. When the copies of judgments are returned to him by the original Court, he will add the copies to the records, fill in the date of receipt in the above form and strike those cases off his running list. However, if copies are not returned within 15 days of dispatch, he will issue a letter of request to the original Court and if that is ineffective, report the matter to the Appellate Court.

(iv) The running list will be in the following form:

Name of Case	Date of Despatch	Original Court	Date of Letter of Request, if any.

(v) If the Presiding Officer of a Subordinate court desires to see the original record in any case, he will be allowed to call for it, provided that it must not leave his Court Room.

Chapter-26

References to the High Court

1. Relevant provisions for making references

(i) A reference to the High Court may be made by any Civil Court under Section 113 and Order XLVI of the Code of Civil Procedure. A reference by Civil Court or Revenue Court may also be made to the High Court under Sections 99 and 100 of the Punjab Tenancy Act, 1887.

(ii) Under Section 113 and Order XLVI, Rules 1 and 6 of the Code and Section 99 of the Punjab Tenancy Act, the power to make reference is discretionary. However, under proviso to section 113 of the Code and under Section 100 of the Punjab Tenancy Act, it is mandatory to make the reference, if conditions mentioned therein are satisfied. Under Order XLVI Rule 7(1) of the Code, the District Judge has discretion to make the reference under first part (if not required by a party) whereas under second part of the Rule, it is mandatory for the District Judge to make the reference (if required by a party), if conditions mentioned in the said Rule are satisfied.

(iii) Reference by the District Judge shall be made directly to the High Court whereas reference by any other Civil Court shall be made through the District Judge, who should forward it without avoidable delay. Reference by Revenue Court under Section 99 of the Punjab Tenancy Act should be made through the Commissioner whereas reference by Revenue Court under Section 100 of the said Act should be made through the District Judge.

(iv) Reference under Order XLVI Rule 1 of the Code should be made only when the Presiding Officer entertains a reasonable doubt on the point of law or usage having the force of law, and not merely on the importunity of counsel.

(v) A Subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a judgment of the High Court, unless some doubt has been thrown on the correctness of the same by another judgment of the High Court or by a judgment of the Supreme Court.

2. Mode of Reference

(a) In making a reference, the Presiding Officer should be careful to conform to the requirements of Order XLVI Rule 1, of the Code by:-

(i) drawing up a statement of the facts of the case;

(ii) stating the point on which doubt is entertained; and

(iii) stating his own opinion on such point.

Each of the above statements should be precise and clear because otherwise, the High Court may be compelled to return the reference for amendment under Order XLVI Rule 5 of the Code.

It is also essential that the true character of the suit should be described with precision and accuracy in the heading of the reference.

(b) Every reference under Section 99 or Section 100 of the Punjab Tenancy Act shall state the reasons for making the reference, and shall indicate the Revenue Court which in the opinion of the Court making the reference, has or had jurisdiction under Section 77 of the said Act over the case in question. The Revenue Court should be accurately described according to the nomenclature prescribed in Section 6 of the Punjab Land Revenue Act, 1887 read with Sections 75 to 77 of the Punjab Tenancy Act.

3. **References under Order XLVI Rule 7**

It should be noted that reference under Order XLVI Rule 7 of the Code may be made only when the District Court forms an opinion that the Subordinate Court has committed jurisdictional error of the nature mentioned in the said Rule. Without forming such opinion, reference cannot be made. Even after forming such an opinion, the District Court still has discretion to make or refuse to make a reference, unless it is required to make it by a party. In the latter case, the Court is bound to make a reference.

4. **Reference under Section 99 of the Punjab Tenancy Act.**

When a Revenue Court has returned a plaint for lack of jurisdiction and the plaint is subsequently presented in Civil Court and such Civil Court is of the opinion that the suit is in fact not triable by a Civil Court, the Civil Court should not again return the plaint, but should refer the point at once to the High Court under Section 99 of the Punjab Tenancy Act.

5. **Parties to be heard**

(i) A reference to the High Court shall not be made, unless the parties to the case have been given opportunity of hearing to show cause against such reference in the Court which proposes to make it.

(ii) The Court making the reference shall in its order of reference certify that such opportunity has been given, and shall place on record the objections, if any, filed by any party against the making of such reference.

(iii) The Court making the reference shall give notice to the parties being represented before it while making the reference:-

(a) that the attendance of the parties in the High Court at the hearing of the reference is not obligatory;

(b) that any party desirous of attending such hearing must enter appearance at the office of the Registrar (Judicial) of the High Court on or before a date to be specified in the notice.

(iv) The date specified in the aforesaid notice shall ordinarily be not less than one month from the date of making the reference, so as to allow a reasonable time for the parties to appear in the High Court.

(v) The Court shall certify in its order (a) that the notice required under sub-rule (iii) has been duly given and (b) the date specified in such notice.

6. **Necessary records to be sent**

The Court making the reference shall forward with its order, the record of the case in which the reference is made and of all proceedings, if any, by way of execution or otherwise in such case subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

7. **Reference by Revenue Courts.**

The aforesaid provisions apply mutatis mutandis to references by Revenue Courts.

Chapter 27

Advocates

I Power of Attorney:- (i) Every appointment of an Advocate(including a pleader) to act shall contain in full the name of the person or every person who thereby authorises the Advocate to act on his behalf and shall be executed by every such person.

(ii) When such appointment is not executed by the principal himself but by some person on his behalf, the Advocate will not be recognised by the Court without proof that such person was duly authorised by the principal to execute such appointment.

(iii) In cross-appeals, an Advocate who has already filed a power of attorney or memorandum of appearance for the appellant shall not be required to file another power of attorney or memorandum of appearance for his client as respondent in the cross-appeal.

(iv) The Power of Attorney or memorandum of appearance shall be filed in the Court by the Advocate shortly after his engagement, indicating the date of engagement.

II. Fees of Counsel: In exercise of the powers conferred by Article 227 of the Constitution of India and Section 34 (IA) of the Advocates Act, 1961 and all other powers enabling it in this behalf, the High Court of Punjab and Haryana makes the following rules fixing and regulating the fees payable as costs by any party in respect of the fees of adversary's Advocate upon proceedings in Civil Courts Subordinate to the High Court.

(1) **Suits for recovery of money, property etc**.: In suits for recovery of money or of specific property or share therein, whether immovable or moveable, or for the breach of any contract or damages:-

(a) If the amount or value of the property, debt or damages decreed does not exceed ` 1,00,000, the fee shall be ` 3,000.

(b) If the amount or value exceeds ` 1,00,000 but does not exceed ` 5,00,000, the fee shall be calculated at 3% of the value.

(c) If the amount or value exceeds ` 5,00,000, the fee shall be ` 15,000 plus 1% of the amount in excess of ` 5,00,000, however, that in no case, the amount of fee shall exceed ` 50,000.

2. Less contested suits etc.

In the case of:-

(i) Summary suits under Order XXXVII of the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with the condition on which leave to defend was granted, and appeals against decrees in such suits;

(ii) Suit, the claim in which is admitted but only time or installment, for payment is asked for;

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence except evidence under Rule 2 Order X of the Code of Civil Procedure;

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure;

(v) Suit in which judgment is given on admission under Rule 6 of Order XII of the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure;

(vi) Short causes, commercial causes and long causes in which no written statement is filed, and appeals from decrees in such suits;

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure;

(viii) Any formal party to a suit or appeal e.g., a trustee or estate holder who only appears to submit to the orders of the court and asks for his costs;

(ix) A suit or appeal which has abated;

(x) A plaint returned for presentation to the proper Court,

the amount of Advocate's fee to be allowed shall be fixed by the Court disposing of the matter, but shall not exceed half of that payable according to the rate specified in Rule 1: Provided that the fee shall not be less than Rs. 1500/-.

3. Other suits: In suits for injuries to the person, property or character of the plaintiff or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined or the suits which do not admit of being satisfactorily valued, the Court may order the counsel's fee allowed to the plaintiff to be calculated according to Rule 1 with reference to the amount decreed or such other sum as the Court thinks reasonable with reference to the importance of subject of dispute but the same shall not be less than ` 3,000.

4. Miscellaneous Proceedings:- In miscellaneous proceedings including arbitration cases, probate cases etc., the counsel's fee to be allowed by the Court shall not exceed ` 10,000 if contested and ` 5,000 if uncontested. The amount of fee shall be fixed by the Court keeping in view all the circumstances of the case.

5. Execution proceedings:- In execution proceedings, the Advocate's fee to be allowed in the case of contest shall be 1/3rd of the fee allowed in the suit or original proceedings and in case of uncontested proceedings, shall be 1/5th of the fee allowed in the suit or original proceedings. Such fee shall be charged in the first execution application only. However, if first execution application is not contested and some subsequent execution application is contested, then difference in the fee for contested application shall be allowed in such subsequent application.

6. Fee allowed to defendant.

(i) If the suit is dismissed for default, the Court shall allow such fee for counsel of the defendant, not exceeding 3/4th of the fee calculated according to preceding rules, as may be considered reasonable keeping in view the stage of the suit and all other circumstances.

(ii) If the suit is dismissed on merits, counsel's fee to the defendant shall be allowed as calculated according to the preceding rules.

7. Fee if case decreed partially: If the suit is decreed partly and dismissed partly, the counsel's fee allowed to each party should be fixed with reference to the value of that part of the claim in respect of which he has succeeded and shall be calculated according to preceding rules.

8. Suits for damages: If in any suit for damages, the plaintiff succeeds as to the whole of his cause of action but the suit is not decreed for the full amount of damages claimed, the defendant shall not be entitled to any allowance in counsel's fee in respect of the difference between the amount of damages claimed and the amount decreed unless the Court is of the opinion that the amount claimed was unreasonable or excessive and the Court may, for that reason or any other reason to be recorded, direct that a fee shall be allowed to the defendant. Such fee shall be calculated according to preceding rules with reference to the amount of damages dis-allowed to the plaintiff.

9. Undefended suits: If a suit remains undefended, the fee shall be calculated at half the sum at which it would have been calculated in case of contested suit.

10. Residuary: (i) In suits for declaration, injunction etc., value of the suit for purpose of jurisdiction may be determined according to law and counsel's fee calculated thereon accordingly. However, in cases which do not admit of proper determination of value for

purpose of jurisdiction, the Court may allow reasonable amount of fee keeping in view all the circumstances of the case, but it shall not be less than ` 3,000.

(ii) In original cases relating to matrimonial cause, land acquisition, claims regarding motor vehicle accident, the Court shall fix reasonable amount of fee which shall be not less than ` 3,000 and more than ` 15,000. However, in connected case, lesser fee, as deemed reasonable, may be allowed.

(iii) An Advocate who has been engaged by the heirs of a deceased party is not entitled to have fresh fee taxed.

(iv) Where two counsel are required by rules to represent a party, the fees of the assisting counsel shall be equal to 1/3rd of that of the main/ senior counsel's fee.

11. Several defendants: (i) If several defendants having a joint or a common interest succeed on joint defence or on separate defences substantially the same, not more than one fee shall be allowed unless the Court orders otherwise for reasons to be recorded. The Court shall also direct to which of the defendants, it shall be paid or the Court shall apportion it among the defendants in such manner as the Court thinks fit.

(ii) If several defendants, who have separate interest, set up separate distinct defences and succeed thereon, a fee for each of the defendants or set of defendants, who appeared by a separate counsel, may be allowed in respect of his separate interest. Such fee shall be calculated to according to preceding rules with reference to the value of his separate interest.

12. Review: (i) The fee to be allowed to the successful party in case of contested review shall not exceed half of the amount allowed by the preceding rules in case of an original decree.

(ii) If the review application is allowed, the fee in respect of review will be irrespective of the fee which may be included in any costs in respect of the original suit, adjudged to the successful party by the judgment in review.

13. Appeal: The rules relating to fee in original suits shall, so far as may be, apply mutatis mutandis to calculation of fee in appeals. Rule 11 will apply in case of several respondents in appeal.

14. Remand cases: (i) If a case is remanded in appeal to the trial Court to be tried on merits, the trial Court may, in respect of the re-hearing, allow such fee to the successful party as the Court considers to be reasonable but not exceeding half the amount calculated according to preceding rules.

(ii) If report from the trial court is called by the appellate Court on some issue(s) (whether original or additional), the appellate Court may allow such additional fee for the same as it considers to be reasonable but not exceeding half the amount calculated according to the preceding rules, in addition to the full amount for original trial.

(iii) In appeal preferred against a decree passed on remand, the appellate Court shall allow such fee to the successful party as it considers reasonable but not exceeding half the amount calculated under the preceding rules, besides full fee for the appeal.

15. Fee Certificate: (i) No fee of any counsel appearing in civil cases shall be allowed or included in amount of costs unless before the commencement of arguments, a certificate signed by the counsel regarding the amount of fee paid to him or any other counsel in the case for the same party is filed in the Court.

(ii) However, filing of fee certificate by a District Attorney or other Law Officer receiving fixed monthly salary and not separate fee for a case and who appears on behalf of or under the instructions of State Government or Union of India shall not be required. In other cases, it shall be sufficient to certify that a fee has been fixed by the appropriate authority though may not have been actually paid.

(iii) In the case of counsel appearing on behalf of Municipality, Local Body, Improvement Trust, Public undertaking/Corporations/Companies/Authorities etc., it shall be sufficient to certify that a fee has been fixed by an appropriate authority although may not have been actually paid.

16. Form of Certificate: The fee certificate shall so far as possible be in the following form:

In the court of_____District Judge/Civil Judge,_____.

Nature and number of the case_____

A.B. (add description and residence _____)

(Plaintiff or appellant).

Versus

C.D. (add description and residence_____)

(Defendant or respondent).

For the purpose of having my fee allowed on taxation as against the party or parties, who may be liable for costs under the judgment or order of the Court, I_____, in accordance with the rules regulating the fees of counsel in the Court, hereby certify

that in the above case, the following fees were paid to me as my exclusive fee on the dates and by the person or persons specified below before the commencement of the argument and that no portion of such fees has been, or has been agreed to be, returned or remitted or appropriated to the use of any other person by me or by any one acting on my behalf.

Matter	***Fee***	***Date of payment***	***By whom paid***	***Address of person who actually made such payment***

Signature_____

Date of Signature_____

Address of Legal Advocate_____"

17. <u>Discretion of Court</u>.

Nothing in these rules effects the discretion of the Court to allow such fee as may appear just, reasonable and equitable in any particular case.

Chapter-28

Petition Writers

In exercise of the powers conferred by Section 46A of the Punjab Courts Act, 1918 and all other powers enabling it in this behalf, the High Court of Punjab and Haryana is pleased to make the following rules relating to petition-writers namely.

(1) **Short Title**

These rules may be called the Punjab, Haryana and Chandigarh Petition-Writers' Rules.

(2) **Definitions**

In these rules, unless the context otherwise requires:-

(a) 'Petition' means a document, hand-written, type-written or computer printed, for the purpose of being presented to a Court or a Judicial or Revenue Officer or official thereof and includes a plaint and memorandum of appeal.

(b) 'Petition Writer' means a person licensed under these rules to write petitions for hire.

(c) 'To practise as petition-writer' means to write petitions for hire.

(d) 'Court Subordinate to the High Court' means any Civil Court (including a Court of Small Causes) and any Criminal Court, other than the High Court.

(e) 'Revenue Court' means and includes any Revenue Officer exercising the jurisdiction described in Section 77 of the Punjab Tenancy Act, 1887.

(f) 'Revenue Office' means the office of a Revenue Officer.

(g) 'Revenue Officer' means and includes any person having authority as Revenue Officer under the Punjab Land Revenue Act, 1887 or the Punjab Tenancy Act, 1887.

(h) 'Revenue Officers with powers of Civil Courts' invested under Chapter XI of the Punjab Land Revenue Act, 1887, shall be deemed to be Civil Courts or Revenue Courts according as they are under the control of the High Court or of the Financial Commissioner.

Explanation

(1) In these rules, the words 'write' or 'written' wherever occurring shall be deemed to include type-written or computer printed.

(2) Since separate rules relating to petition writers for Revenue Courts and Revenue Officers have been framed in Punjab by the Financial Commissioner in exercise of power under Section 106A of the Punjab Tenancy Act, 1887:-

(i) The word 'Court' wherever used in these rules shall, in Punjab, be deemed to be Civil Court only whereas in Haryana and U.T. Chandigarh, it shall mean Civil as well as Revenue Court.

(ii) The words 'Revenue Officer', 'Revenue Office' or 'Revenue Court' wherever occurring in these rules shall stand omitted in applicability to Punjab.

3. **Practice as a petition-writer**

No person shall practise as a petition-writer, unless he has been duly licensed under these rules:

Provided:-

(i) that any person licensed under any rule hitherto in force shall be deemed to have been licensed under these rules.

(ii) that these rules shall not apply to any Advocate, Pleader, or Mukhtar, in respect of a petition written for presentation to a Court or Revenue Office in which he is qualified to practise, whether such petition be written by himself or his Clerk or on his behalf, so that in the latter case, it be signed by the employer.

4. **Prohibition to receive petition**

No petition shall be received by a Court or a Revenue Officer or an official thereof, unless it is written by the party or his recognized agent, or by an Advocate or petition-writer, except in the case of an application filed by an accused person in custody, in which case the name and status of the person writing the document should appear on it. A clerk of an Advocate may write such application on behalf of his master provided that it is signed by the latter. This rule, however, does not apply to Courts under the Panchayati Raj Act.

5. **Number of petition-writers**

The High Court shall fix the maximum number of persons who can practise as petition-writers in a District, Sub-Division, Tehsil or Sub-Tehsil.

6. **Licencing Authority**

The District Judge of the concerned District shall be the Licencing Authority within his jurisdiction.

7. **Eligibility for grant of licence**

(a) No person shall be eligible for the grant of licence as a petition-writer unless he:

(i) has passed the matriculation or equivalent examination.

(ii) has good character and conduct.

(iii) has good handwriting to the satisfaction of the Licencing Authority.

(iv) is 18 years of age or above; and

(v) has qualified in the examination to be held by the Licensing Authority for judging the proficiency in drafting petitions and basic knowledge of the laws.

(b) However, a person shall not be eligible for grant of licence as a petition-writer if he:-

(i) is in the employment of any Government, Local Authority, Public Authority/Corporation/Company or of an Advocate; or

(ii) is an adjudged insolvent; or

(iii) has been dismissed from the service of any Government, Local Authority or Public Authority/Corporation/Company; or

(iv) has been convicted of any offence involving moral turpitude; or

(v) is of unsound mind

Any condition of sub-rule (a) may be relaxed by the High Court in special cases where local circumstances make it desirable to do so.

8. **Licence**

(i) Any person desiring to obtain a licence as a petition-writer shall make an application to the Licencing Authority along with requisite fee.

(ii) Fee for grant or renewal of licence shall be `100/- to be paid by means of court fee stamps.

(iii) The Licencing Authority may after taking into consideration the matters mentioned in the preceding rule either grant or refuse licence. The licence shall not be refused without affording opportunity of hearing to the applicant concerned. Reasons for such refusal shall also be recorded and conveyed to the applicant and the fee paid by him shall be refunded to him.

(iv) The licence to be issued shall be in form A annexed to these rules.

(v) Every licence shall, unless suspended, cancelled or surrendered earlier, be valid upto 31st December of the 5th calendar year from the date of its grant and may be renewed for a further period of 5 years at a time.

(vi) A register of licensed petition-writers in Form B annexed to these rules will be maintained in the office of every District Judge. The name of every licensed petition-writer of the District Court concerned will be entered in the said register.

9. **Renewal of licence**

(i) A licensee desiring to get his licence renewed shall, within two months before or after the date of expiry of the licence, make an application for renewal to the Licencing Authority along with requisite fee.

(ii) If there is no reason not to renew the licence, the licence shall be renewed. The applicant shall be deemed to be a licensee even during the period the application remains

pending with the Licencing Authority. The licence may not be renewed, if the applicant is not proficient in drafting petitions in the local official language.

(iii) If the application for renewal is made after the period specified in sub rule (i), additional fee of `25/- for each month or part thereof after the specified period, shall be charged.

10. **Conditions on which licence remains in force.**

A licence granted to a petition-writer authorizes him to practise as such, subject to these rules, and continues to be in force during its validity period or until:

(i) it is suspended, cancelled or surrendered; or

(ii) the petition-writer ceases to be eligible in accordance with rule 7; or

(iii) the petition-writer is suspended or dismissed or is debarred from practising as such by a competent authority, whichever is earlier.

11. **Charges**

All charges realized from petition-writers under these rules should be forthwith paid into the Treasury to the credit of Government, the treasury receipt being placed with the papers relating to the concerned petition-writers.

12. **Return and List**

(i) On or before the Ist of March every three years, District Judge will submit to the High Court a return in Form C annexed to these rules showing, in exactly the same order as in the last published printed list, the names of all the petition-writers borne on that list as on Ist of January that year, with the names of any persons who may have been restored or added since the list was last published. The names of persons removed from the register after the publication of the last list should be entered in red ink in their respective places and the cause of removal briefly stated in the column of remarks. Names of petition-writers whose licenses have been suspended should be entered in black ink and the reason for suspension with date of order noted in the column of remarks. Names of petition-writers who have been restored to the list should be entered at their original places and a note of date of restoration be made in the column of remarks.

(ii) Printed copy of list of licensed petition-writers of every District will be furnished by the High Court to the concerned District Judge who, as soon as possible, should bring to notice of the High Court any error or omission therein. The list should be displayed in a conspicuous place of every Court house and revenue office.

13. **Production and suspension**

(i) Every licensed petition-writer shall, in the month of January of each calendar year, produce his licence for inspection by the Licensing Authority. A note of such production,

with the date, will be entered on the licence. If a petition-writer fails to comply with this rule, his name will be posted in a conspicuous place of the Court house of the Licencing Authority as well as Court house of the highest Court in which he ordinarily practises, with an order that the operation of his license is suspended and that he will be liable to penalties if found practising whilst such order of suspension is in force.

(ii) If the petition-writer subsequently produces his licence for inspection at any time during the concerned calendar year, the order of suspension may be withdrawn subject to a charge of `100/-.

14. **Shifting of place of business**

No licensed petition-writer shall shift his place of business from one District to another except with the previous sanction of the High Court, subject to there being a vacancy in the District to which shifting is desired. However, it shall be within the discretion of the District Judge to permit shifting by any petition-writer from one place to another within the same district.

15. **Duplicate Licence**

If the licence of a petition-writer is lost or damaged, he may apply to the Licencing Authority for a duplicate licence. If the Licencing Authority is satisfied that the previous licence has been lost or damaged (the damaged licence to be produced with application), it shall on payment of fee of `50/- cause a fresh licence to be issued in the same form and bearing the same date as the lost or damaged licence and shall cause the words "Duplicate Licence" to be enfaced thereon, with the date of issue and shall sign such enfacement. Every matter required to be noted on the licence by these rules shall be noted on the back of the duplicate licence under the signature of the Licencing Authority.

16. **Manner of writing petitions.**

Every petition-writer while writing petitions shall confine himself to expressing in plain and simple language such as the petitioner can understand and in a concise and proper form, the statements and objects of the petitioner and shall not introduce any argument or quotation from a Law Report or other Law Book, or refer to any decision not brought to his notice by the petitioner.

17. **Register of petitions to be kept**

Every Petition-writer shall keep only one register for each calendar year in Form D annexed to these rules and shall enter therein every petition written by him. Blank spaces shall not be left in the register. Should one occur, the petition-writer shall forthwith have it cancelled by the Presiding Officer of a nearest Court. The register shall be inspected in the next following month of January by the Licencing Authority, who shall also see that blank spaces, if any, have already been cancelled.

18. **Seal**

Every petition-writer shall at his own expense, provide himself with a seal, engraved with his name, place of business, licence number and year thereof, in the official language. True impression of the seal shall be got deposited with the Licencing Authority for record.

19. **Training of taking finger prints**

(i) Every petition-writer shall acquire training in the mode of taking finger prints in such a manner as the High Court may prescribe.

(ii) A certificate by the Licencing Authority in the following form shall be conclusive proof in this regard:-

"Certified that Sh.----------petition-writer has received the necessary training in the art of taking correct thumb impressions on documents with the aid of rubber roller, tin slab and printers ink. He is, however, not qualified to do any other kind of finger print work.

Dated_____

District Judge

District_____

(iii) Every petition-writer shall keep standard tin slab, rubber roller and printers ink for taking thumb impressions. The thumb impressions of executants and witnesses, when required to be taken on the documents and on his register, will be taken by the petition-writer with this apparatus.

20. **Declaration to be made on the petition**

Every petition-writer shall record, at the foot of every petition written by him, other than a petition of a merely formal character, a declaration under his signature that to the best of his knowledge and belief, the petition expresses the true meaning of the petitioner and that its contents have been fully explained to the petitioner.

21. **Signature, Seal and endorsement on the petition**

Every petition-writer shall sign and seal with his seal, every petition written by him and shall enter on it the number which it bears in his register and the fee which has been charged for writing it.

22. **Employment of other persons**

A petition-writer shall not dictate a petition to, or cause a petition to be written by, a person who is not a licensed petition-writer nor shall he employ any person who is not a licensed petition-writer to write petitions for him. However, the petition-writer may employ persons for the purpose of typing or computer printing the petitions drafted by him and the

petitions so typed or computer printed shall be scrutinized, verified and signed by the petition-writer. The persons so employed shall not draft petitions themselves but shall only carry out the directions of the petition-writer on the type-writer or the computer.

23. **Order to rewrite a petition**

Any Court or Revenue Officer may order a petition-writer to rewrite at his own cost any petition written by him which contravenes Rule 14 or is illegible, obscure or prolix or contains any irrelevant matter or misquotation or for any other sufficient cause.

24. **Prohibitions**

(i) A petition-writer shall not instigate any person to cause to be written by himself or by any other petition-writer, any petition which he knows to be unnecessary.

(ii) A petition-writer shall not take payment for his services by an interest or share in the result of any litigation in connection with which he is employed, nor shall he fund, or contribute towards the funds requisite for carrying on, any litigation in which he is not personally interested.

(iii) A petition-writer shall not act as a recognized agent in any case in a Court or before a Revenue Officer except in a case in which he is himself a party.

(iv) No petition-writer shall engage in any business or trade without the previous permission in writing of the Licencing Authority.

25. **Fees to be charged**

No petition-writer shall charge fees for writing petitions in excess of those shown in the Schedule hereto annexed. A copy of the Schedule shall be exhibited conspicuously by the petition-writer at his place of business. A copy of the Schedule shall also be exhibited at conspicuous place of the Court of District Judge, highest Civil Court at Sub-Division and highest Revenue Court/Revenue Office at District, Sub-Division, Tehsil and Sub-Tehsil. The actual amount charged for each petition shall be correctly entered in the proper column of his register and also mentioned at the foot of the petition. He shall issue a receipt for the amount received by him.

26. **Surrender of Licence**

Every petition-writer shall forthwith surrender his licence to the Licencing Authority, if-

(i) his licence is suspended;

(ii) he enters the service of Government, Local Authority, Public Authority/Corporation/Company or an Advocate, or

(iii) he is suspended or dismissed under these rules.

A petition-writer may also voluntarily surrender his licence to the Licencing Authority.

27. **Rules as to Practice**

No petition-writer shall practise:-

(i) contrary to the terms of his licence;

(ii) in any Panchayat of which he is a member or Sarpanch;

(iii) in any Court or Office in which he has been forbidden to practise; or

(iv) after his licence has been or should have been surrendered or after he has been suspended or dismissed or his licence is suspended or cancelled.

28. **Order prohibiting practice.**

(i) The Presiding Officer of any Civil or Revenue Court or any Revenue Officer may, for any sufficient cause to be recorded in writing, prohibit any petition-writer from practising in his Court or Office pending a reference to the Licencing Authority.

(ii) Every such order of prohibition shall be communicated to the Licencing Authority who shall forthwith endorse the substance and date of the order on the license.

29. **Punishments**

(i) Any person who practises as a petition-writer without licence or a petition- writer who fails to obey the order passed under Rule 23 shall be liable to penalty not exceeding `500/-.

(ii) Any petition-writer who acts in violation of any other rule shall be liable to be suspended or dismissed or to pay penalty not exceeding `500/- and also to his licence being suspended or cancelled.

(iii) Any petition-writer who,

(a) habitually writes petitions contrary to these rules or containing irrelevant matter or otherwise objectionable, or

(b) Uses disrespectful, insulting or abusive language in the course of his business, or

(c) is found to be incapable of efficiently discharging his functions, or

(d) is found to be unfit to practise as petition-writer by reason of any fraudulent or improper conduct in the discharge of his business, or

(e) is convicted of any offence involving moral turpitude, or

(f) charges fee in excess of that specified in the Schedule, or (g) does not comply with the directions given under these rules,

shall, in addition to any penalty or punishment which may be imposed under these rules or any other enactment or rule for the time being in force, be liable to be suspended or dismissed and his licence shall be liable to be suspended or cancelled.

(iv) The Licencing Authority may take action under this rule either on its own motion or on the report or complaint of any other Court/Revenue Officer or person and may, after such enquiry as it may consider necessary and after giving an opportunity of hearing to the concerned person, impose any penalty or punishment prescribed by these rules.

(v) Operative part or substance of every order passed under these rules against a petition-writer shall be recorded on the back of his licence by the Licencing Authority.

30. **Punishment by the High Court**

Notwithstanding anything hereinbefore contained, the High Court may, for any sufficient cause to be recorded and after such enquiry as it thinks fit, dismiss any Petition-writer, or suspend him from practice for specified period.

Provided, that no such order shall be made without giving opportunity of hearing to the person charged.

31. **Striking off name from register**

The name of the petition-writer who does not get his licence renewed for a continuous period of one year after its expiry shall be struck off the register maintained by the Licencing Authority. However, such a petition-writer may apply for the grant of a fresh licence as a fresh applicant, if there is a vacancy at the concerned place.

32. **Appeal/revision**

(i) No appeal shall lie from any order passed by any Court or Officer or Licencing Authority under these rules, but the High Court may in its discretion revise any such order, and pass such order as it thinks fit.

(ii) The High Court may also, for sufficient reason, grant a new licence to any petition-writer who has been dismissed and may also order restoration of the suspended licence of a petition-writer.

(iii) Nothing in these rules shall be deemed to limit or restrict the exercise by the High Court of its general powers of superintendence and control.

33. **Intimation to High Court**

Copy of every order whereby a licensed petitioner-writer is suspended or dismissed should be submitted to the High Court, for information.

FORM A

FORM OF LICENCE FOR A PETITION-WRITER

(Rule 8)

In the Court of the District Judge of the _____

Certified that……son of…….

resident of……....., has this day been licensed as a petition-writer and is hereby permitted to practise as such in the manner prescribed by the rules relating to petition-writers, and subject to the provisions of the said rules till the 31st day of December, 20--.

Given under my hand and the seal of this Court, this……day of……..20…… ,at……..

District Judge

District_____

Note.—Petition-writers are reminded that participation by them in any seditious or disloyal movement will be regarded as sufficient cause for dismissal or suspension under the rules.

Date of the renewal of licence	Renewing Officer

FORM B. [Rule 8(vi)]

Register of Petition Writers to be maintained in District Courts.

Note.—One or more pages to be set apart for each petition writer.

Page of Register……..

Register No……..

Name of Petition-writer.....

Father's name.....

Residence ……..

Place of business ..... …….

Date of grant of license ……

Authority granting license.....

Note.—On the rest of the page will be entered in chronological order-

(1) the date of each annual inspection of the license under rule 13;

(2) the date on which any license ceases to be in force under rule 8;

(3) the date of, and authority for every transfer of place of business under rule 14;

(4) the date of the grant of every duplicate licence under rule 15;

(5) the date and substance of every order passed under rules 8,9,13,28,29,30,31 and 32;

(6) a copy of every endorsement made on the license.

FORM C (Rule 12)

Return of Licensed Petition-Writers whose names are borne on the Register of District Judge------ on the Ist January, 20----

Serial No.	Number in Register	Name of licenced petition-writer	Father's Name	Date of Licence	Date of production of licence for annual inspection	**Remarks**
1	**2**	**3**	**4**	**5**	**6**	**7**

Form D

Register to be maintained by every Licensed petition-writer.

Rule 17

1	2	3	4	5	6	7	8	9	10

Sr. No. of Petition	Date on which Petition is written	Name, Percentage, caste and residence of the person at	Description of Petition	Brief abstract of contents of Petition	Value of Court fee labels affixed to the Petition	Fee charged for writing the petition	Remarks	Signature of petition-writer	Signature or thumb impression of the petitioner.

SCHEDULE

(Scale of fees)

(Rule 25)

S. No.	**Nature of document.**	**Scale of fee**
1.	Plaint	**`250/-**
2.	Copy of Plaint	**`2/- per page**
3.	Written Statement with copy.	**`150/-**
4.	Appeal Civil	**`250/-**
5.	Application for stay of execution proceedings.	**`50/-**
6.	Application for grant of temporary injunction.	**`50/-**
7.	Affidavit.	**`25/-**
8.	Application under the Guardian and Wards Act.	**`200/-**
9.	Application for grant of Succession certificate or probate or letter of Administration.	**`200/-**
10.	Application under the Insolvency Act.	**`250/-**
11.	Application of final decree.	**`100/-**
12.	Application for execution of decree.	**`100/-**
13.	Objection petition under Order 21 Rule 58 C.P.C.	**`150/-**

14.	Application for eviction	**`250/-**
15.	Application for fixation of fair rent	**`200/-**
16.	Application for amendment of decree.	**`100/-**
17.	Application for setting aside ex- parte proceedings.	**`100/-**
18.	Application for restoration of suit or appeal dismissed in default.	**`100/-**
19.	Application for transfer of a case.	**`100/-**
20.	Notice.	**`50/-**
21.	Fard Talbana.	**`10/-**
22.	List of reliance.	**`25/-**
23.	Index of documents.	**`10/-**
24.	Form of address of plaintiff/defendant or respondent.	**`10/-**
25.	Application for delivery of possession and restoration.	**`50/-**
26.	Application for copy.	**`10/-**
27.	Power of attorney.	**`100/-**
28.	Deed of compromise.	**`100/-**
29.	Reply of notice.	**`50/-**
30.	Application under Order 21, Rule 66, C.P.C.	**`50/-**
31.	Receipt of cash and property.	**`10/-**
32.	List of witnesses.	**`10/-**
33.	Complaint.	**`150/-**
34.	Copy of complaint.	**`2/- per page**
35.	Appeal criminal.	**`150/-**
36.	Revision petition criminal	**`150/-**
37.	Bail Bonds.	**`25/-**

38.	Security bond.	**`50/-**
39.	Personal bond.	**`25/-**
40.	Application for bail with copy.	**`50/-**
41.	Application for stay of proceeding for realization of fine.	**`50/-**
42.	Application for permission to sue or appeal as indigent person, with list of property.	**`100/-**
43.	Receipt of possession of immovable property.	**`25/-**
44.	Application under Hindu Marriage Act or Special Marriage Act with copies.	**`200/-**
45.	Application under Bengal Regulation.	**`100/-**
46.	Application for permission to dispose of immovable property of a minor.	**`100/-**
47.	Application for refund of fine.	**`25/-**
48.	An application under Mental Health Act, with copies.	**`200/-**
49.	Suit alleging the infringement of copy Right or Trade Mark with copies.	**`300/-**
50.	Miscellaneous application not included in the foregoing items.	**`100/-**

Chapter-29

Subordinate Courts' Employees

Note

It is to be seen whether all Rules are required to be complied in a separate Volume or continued along with other Rules and Orders according to existing scheme. Service Rules relating to staff of Subordinate Courts as contained in existing Chapter 18 of Volume 1 of High Court Rules and Orders may be incorporated in this Chapter, if the existing scheme is to be continued. The Committee has been informed that the said Rules are under the process of fresh examination and consideration in the Rule Cell as per direction of the Hon'ble Rule Committee of the High Court. Provisions of existing Part D and Part E of Chapter 18 of Volume 1 relating to 'character rolls' and 'security' are proposed as under.

A.Annual Reports

1. A separate file of annual reports of work and conduct shall be maintained for every official. The annual reports shall be submitted in the prescribed form.

2. In the first week of January every year, blank forms should be supplied to the Judicial Officers by the Superintendent to the District and Sessions Judge and the Clerk of Court to Civil Judge (Senior Division), as the case may be, for general line and process serving establishment respectively, for them to record remarks on the work and conduct of the officials serving under them for the preceding calendar year. The personal files of any officials against whom adverse remarks have been made in the previous year should accompany these forms to enable the Judicial Officers to state expressly what steps, if any, have been taken by the officials concerned to remedy the defects communicated to them previously. The Judicial Officers should get relevant part of the form completed by the concerned officials and should then record their own remarks and transmit the forms in a closed cover to the District and Sessions Judge/Civil Judge (Senior Division) according as the official concerned is a member of the general line or process-serving establishment. A Judicial Officer on leaving a District should, if he has not already furnished a report, obtain copies of the prescribed forms from the office of District and Sessions Judge/ Civil Judge (Senior Division), record his remarks on the officials working under him and transmit the forms to the District and Sessions Judge/Civil Judge (Senior Division), as the case may be.

3. District and Sessions Judge/Civil Judge (Senior Division) should take steps to see that annual reports on the work and conduct of all officials in the District are received by them not later than the 31st January each year. After they have recorded their own remarks, these reports should be communicated to the officials concerned. The original reports should be

kept in their offices. In deciding questions of promotions including grant of higher scales, due regard should invariably be paid to the entries made in the annual reports.

B.Security

4. Every ministerial officer of a Court who is entrusted with the custody of public money or property shall be required to give requisite security and to execute a bond in Form S.T.R-7 or 7-A.

5. The amount of security to be taken should ordinarily be as given in the table below; provided that if the permanent advance held by the official is more than the amount specified, the security should not be less than the permanent advance so held:-

DISTRICT AND SESSIONS COURTS

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Superintendent	2000/-
Nazir	2000/-
Copyists or Independent Examiners in-Charge of Copying Agencies Accounts	1000/-

CIVIL JUDGES COURTS

Civil Nazir	3000/-
Baillif	2000/-
Clerk of Court of Civil Judge (Senior Division)	1000/-
Naib Nazirs	2000/-
Readers, Civil Judges' Courts	1000/-
Process Servers	500/-

Any other official required to receive, retain or pay money or have custody of property: `1000/-.

6. A register of officials required to give security shall be maintained in the office of District and Sessions Judge and Civil Judge (Senior Division) with following particulars:

1. Name of the Official.
2. Designation of the Official,
3. Amount of security deposited.
4. Date of deposit of security.
5. Date on which the security bond is executed.

6. Certificate in the Head of the Office's own handwriting that he has satisfied himself that the bond has been executed by the person or persons whose signature it bears.

7. Form of security.

8. Where deposited for safe custody.

9. Remarks.

The register shall be kept by the Superintendent or the Clerk of Court, as the case may be, and inspected half-yearly by the District Judge/Civil Judge (Senior Division), as the case may be, who shall date and sign the register in token of inspection.

Chapter-30

Note:

1. Existing Chapter 19 of Volume 1 relating to Civil Districts is required to be omitted.

2. Existing Chapter 20 of Volume 1 relates to various notifications relating to judicial powers. It may either be incorporated in separate Volume, if to be compiled relating to Rules and Notifications or if the existing scheme is to be continued, it may be incorporated as separate Chapter No. 30 in this Volume. Latest relevant notifications to be obtained from the Registry may be incorporated here.

3. Existing Chapter 21 of Volume 1 relates to Rules framed by the High Court from time to time in exercise of power under Section 122 of the Code of Civil Procedure, thereby making additions/alterations to the Rules contained in various Orders in the first Schedule of the Civil Procedure Code. It is to be seen, if the rules so made by the High Court have to be compiled in separate Volume or in the present Volume as per existing scheme. Such latest Rules may be incorporated here as Chapter No.31.

4. Existing Chapter 22 of Volume 1 contains Rules relating to appointment etc. of Civil Judges and Superior Judicial Officers of both the States of Punjab and Haryana. They may either be incorporated in separate Volume or a separate Chapter No. 32 in this Volume. The latest rules so framed, may be incorporated.