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## **Proposed Preface to Revised Volume-II of the High Court Rules and Orders**

Pre-revised Volume-II of the High Court Rules and Orders contained provisions relating to special jurisdiction of Courts (including High Court) under certain Acts. High Court Rules and Orders were framed several decades back, before partition of the country, by Lahore High Court-now in Pakistan (predecessor of this High Court). Since then, various amendments were made thereto from time to time by issuing correction slips. However, during the long period of several decades, there have been large scale changes in law including enactment of new laws, besides great advancement in technology. There have also been some amendments in the aforesaid Acts. In view of all these changes, complete revision of the High Court Rules and Orders, instead of patch work of making amendments, was required. Accordingly, while revising Volume-II of the High Court Rules and Orders, aforesaid changes including rules, correction slips, notifications and instructions issued by the High Court from time to time have been taken into consideration.

Some provisions of the pre-revised Volume-II had become obsolete and have, therefore, been omitted in this revised Volume. Some new provisions which needed to be introduced have been added. Some provisions which needed modifications have been modified accordingly whereas some other provisions have been retained in this revised Volume.

Chapter 1 Part A of the pre-revised Volume II of the High Court Rules and Orders contained rules made by the High Court under the Indian Companies Act, 1913 (since repealed by the Companies Act, 1956 which also stands repealed by the Companies Act, 2013). Similarly, Chapter 1 Part B of the pre-revised Volume II contained rules made by the High Court under the Banking Companies Act,

1949 (now the Banking Regulation Act, 1949). However, the Companies Act, 2013 is also applicable to the Banking Companies. Under the Companies Act, 2013, the High Court has no power to frame rules because proceedings for winding up of a Company under the said Act have to take place before the National Companies Law Tribunal to be constituted under the said Act and not in the High Court and such cases pending in the High Court may also be transferred to the said Tribunal. Consequently, rules contained in Part A and Part B of Chapter 1 of the pre-revised Volume II have not been revised. However, till the constitution of the National Companies Law Tribunal, the aforesaid existing rules contained in Part A and Part B of Chapter 1 of pre-revised Volume II shall remain applicable.

In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984, the High Court had framed rules called the Punjab and Haryana High Court Family Courts Rules, 2005. However, the said Rules were not incorporated in any pre-revised Volume of the High Court Rules and Orders. The said rules after revision have been incorporated as new Chapter 4 in the revised Volume II in continuation of the rules contained in Chapters 1 to 3 of the revised Volume II containing rules relating to matrimonial cases.

Parts C, D and E of Chapter 1 of the pre-revised Volume II have been split into three separate Chapters in the revised Volume II so as to obviate the inconvenience and confusion in referring to any rule in the said Parts.

Chapter 3 of the pre-revised Volume II consisted of a single rule made by the High Court under the Indian Trusts Act, 1882, authorizing investment of trust money in debentures issued by the Trustees of the Port of Bombay. The said Chapter has been omitted from the revised Volume II.

Chapters 4 and 5 of the pre-revised Volume II related to insolvency proceedings. However, in view of very few and rare insolvency cases being

instituted and pending in the States of Punjab and Haryana and Union Territory, Chandigarh, only general instructions contained in Part A of Chapter 4 of the pre-revised Volume II have been examined and with some minor changes therein, have been incorporated in corresponding Part A of Chapter 6 of the revised Volume II whereas the rules framed by the State Government contained in Part B and rules framed by the High Court as contained in Part C, Part D and Part E of Chapter 4 of the pre-revised Volume II have not been examined in detail. The said rules with necessary formal changes (e.g. title of the rules) have been incorporated as such in Chapter 6 of the revised Volume II. Similarly, Chapter 5 of the pre-revised Volume II containing administrative instructions in insolvency cases, with similar necessary formal changes, has been incorporated as Part F in the same Chapter 6 of the revised Volume II.

Chapter 8 of the pre-revised Volume II related to Civil Courts Accounts. Part E thereof contained rules relating to Civil Court Deposit Accounts. These rules provided for two systems of deposit i.e. Cash system and Voucher system. The Cash System was provided because there was no treasury or sub-treasury at some stations where Courts were located. However now, there is Treasury or sub-treasury at every station in Punjab and Haryana wherever Courts are situated. Consequently, rules relating to the Cash System contained in Section B of Part E of Chapter 8 of the pre-revised Volume II have been omitted and necessary consequential changes have been made in the other rules.

Chapter 9 of the pre-revised Volume II contained the rules framed by the High Court under the Gram Nyayalayas Act, 2008. The High Court had framed the Punjab Gram Nyayalayas Rules, 2010 and the Haryana Gram Nyayalayas Rules, 2010, separately for the States of Punjab and Haryana. However, both the sets of rules were identical. Consequently, in Chapter 10 of the revised Volume II,

common rules for both the States called the Punjab and Haryana Gram Nyayalayas Rules, 2015, with necessary changes, have been incorporated.

While preparing the revised Volume II, instead of incorporating in detail relevant provisions of the Acts in question, which would be only duplicity thereof, attention of the Courts has been drawn by simply referring to the said provisions. However, where deemed necessary, the said provisions have been incorporated or mentioned in some detail in this revised Volume.

Principles of law laid down by this Court or by Hon'ble Supreme Court on some important aspects have also been incorporated where required. However, the same are subject to further evolution of law in future.

Views were also sought from the Judicial Officers and Members of the Bar in Districts and Sub-Divisions of both the States and Union Territory through District and Sessions Judges and the same were also taken into consideration while preparing this revised Volume.

Comparative Table of provisions of pre-revised Volume-II and provisions of this revised Volume has been prepared and included for facility of reference.

Revised Volume has been prepared after thorough revision with great effort with hope that it would be useful for Judicial Officers, staff of Courts, Advocates and Litigants.

Justice L.N. Mittal (Retd.)  
Chairman, Committee on Process  
Re-engineering.

## **Punjab and Haryana High Court Rules & Orders**

### **Volume-II**

#### **SPECIAL JURISDICTION**

##### **Note**

Existing Chapter-1 Part-A of Volume-II of the High Court Rules and Orders relates to Rules made by the High Court in exercise of powers conferred by Section 246 of the Indian Companies Act, 1913 (since repealed by the Companies Act, 1956). Under Section 643 of the Companies Act, 1956 also, the High Court had power to frame the rules. However, the Companies Act, 1956 also stands repealed by Section 465 of the Companies Act, 2013, some provisions whereof are yet to come into force. Under the Companies Act, 2013, the High Court has no power to frame rules because proceedings for winding up of company under the said Act have to take place before the National Companies Law Tribunal constituted under Section 408 of the said Act and not in the High Court and even cases of winding up of companies pending in the High Court may be transferred to the said Tribunal under Section 434 of the Companies Act, 2013. Consequently, rules under Section 643 of the Companies Act, 1956 are not required to be framed or re-framed at this stage. On the contrary, in view of Section 645 of the Companies Act, 1956, the existing rules made by the High Court in exercise of powers conferred by Section 246 of the Indian Companies Act, 1913 continue to be in force as if made under Section 643 of the Companies Act, 1956.

Similarly, existing Chapter-1 Part-B of Volume-II of the High Court Rules and Orders contains rules framed by the High Court in exercise of powers conferred by Section 45-N(2) and Section 45-U of the Banking Companies Act, 1949 (now the Banking Regulation Act, 1949) relating to

winding up of the Banking Companies. However, in view of Section 1(4)(c) of the Companies Act, 2013, the said Act is also applicable to the Banking Companies. Consequently, Rules made by the High Court under the Banking Companies Act, 1949 (now the Banking Regulation Act, 1949) are not required to be revised at this stage.

**Punjab and Haryana High Court Rules and Orders**

**Volume-II**

**SPECIAL JURISDICTION**

**Chapter-1**

**Rules under the Divorce Act, 1869**

In exercise of the powers conferred by Section 62 of the Divorce Act, 1869 (IV of 1869) and all other powers enabling it in this behalf, the Punjab and Haryana High Court hereby makes the following rules:-

**1. Short Title and interpretation.**

(a) These rules may be called the Divorce (Punjab, Haryana and Chandigarh) Rules, 2015.

(b) Terms and expressions used herein shall have the meanings respectively assigned to them in the Divorce Act, 1869.

**2. How proceedings to be originated.**

Proceedings under the Act shall be originated by filing a petition to which shall be attached a certified or self-attested copy of the certificate of the marriage.

**3. Title of petition.**

All such petitions shall be titled as follows:-

In the Court of District Judge, .....

Case No..... of 20...

Matrimonial Jurisdiction.

In re: The Divorce Act, 1869

A.B.

Petitioner

Versus

C.D.

Respondent

E.F.

Co-respondent

Petition under Section (s)-of the Divorce Act, 1869

#### **4. Contents of petition.**

In the body of the petition shall be stated:-

(i) the place and date of the marriage and the name, status and domicile of the parties before the marriage;

(ii) whether the petitioner or respondent professes the Christian religion at the time when the petition is presented;

(iii) the domicile of the husband at the time when the petition is presented, and his occupation and the place or places of residence of the parties respectively at the time of the presentation of petition;

(iv) the principal permanent addresses where the petitioner and respondent cohabited within the jurisdiction, and in particular the place where they last resided together;

(v) whether there is any living issue of the marriage and, if so, the name, and date of birth or age, of such issue;

(vi) whether there have been in any Court any, and, if so, what previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings;

(vii) the ground(s) on which the relief has been sought;

(viii) the matrimonial offences charged, set out in separate paragraphs including particulars of the times and places (so far as practicable) of their alleged commission.

(ix) the claim for custody of children, if any;

(x) that there is no collusion or connivance between the parties.

#### **5. Prayer of petition.**

The petition shall conclude with a prayer setting out particulars of the relief claimed, including any order for custody of children which is sought.

#### **6. Signature of petitioner.**

Every petition shall be signed by the petitioner or some other person duly authorized by him. In the case of a minor, it shall be signed both by the minor and his or her next friend and shall be accompanied by the undertaking mentioned in Section 49 of the Act and by a petition for approval of the next friend by the Court. In the case of a suit brought under Section 48 of the Act, it shall be signed by the person bringing the suit.

#### **7. Verification of petition.**

Pursuant to Section 47 of the Act, every petition shall be verified in the manner provided by Order VI, Rule 15, Civil Procedure Code.

#### **8. Alleged adulterer to be co-respondent.**

In every petition for dissolution of marriage on the ground of adultery, the alleged adulterer or adulteress shall be made co-respondent in the petition unless the Judge shall otherwise direct by order on a petition, supported by affidavit, pleading one or more of the grounds enumerated in Section 11 of the Act.

**9. Respondent includes co-respondents.**

The term “respondent” in these rules shall include a co-respondent so far as the same is applicable.

**10. Copy(ies) for respondent(s) to accompany the petition.**

Every petition under the Act shall be accompanied by true copy (ies) thereof to be supplied to respondent(s).

**11. Notice how served.**

The notice of petition shall be served by the Court on each respondent in the manner prescribed in the Code of Civil Procedure and in Chapter-4 of Volume-1 of the High Court Rules and Orders for the service of summons or notice on a defendant or respondent.

**12. Order dispensing with service of petition.**

No order dispensing with service of a petition upon a party to be affected thereby shall ordinarily be made by the Court.

**13. Divorce by mutual consent.**

These rules pertaining to petition for divorce shall, so far as may be, also apply to petition for divorce by mutual consent.

**14. Application to stay restitution proceedings.**

At any time after the commencement of proceedings for restitution of conjugal rights, the respondent may apply to the Court for an order to stay the proceedings by reason that he or she is willing to resume or to return to cohabitation with the petitioner.

**15. Answer to petition.**

A respondent who has entered an appearance may within time limited by the notice file with the Court an answer to the petition. Such answer will be signed and verified in the manner required by law for the verification of pleadings. A copy of the answer shall be delivered to the petitioner.

**16. Reply to Answer.**

Where in any suit for the dissolution of marriage it appears from the answer that the respondent prays for relief under Section 15 of the Act, the petitioner shall file a reply to the answer within thirty days from the date of filing the answer. Save as aforesaid, no pleading subsequent to the answer shall be delivered except by the leave of the Court.

**17. No answer necessary if question of costs or custody of children.**

After entering an appearance, a respondent in a suit may not in his discretion file an answer and he may without filing an answer be heard in respect of any question as to costs and also as to custody of or access to children.

**18. Restoration of petition dismissed in default.**

If any petition has been dismissed in default for non-appearance or for non-prosecution of the same, the Court may restore the same on an application presented within 30 days from the date of the order of dismissal, if sufficient cause is shown for the restoration. But where the petition has been dismissed in the presence of the respondent, the same shall not be restored unless notice of the restoration application is served on the respondent.

**19. Setting aside of ex parte orders/decrees.**

(i) When ex parte proceedings have been ordered against the respondent in any case, the same may be set aside by the Court on sufficient cause being shown, if application for setting aside the ex parte proceedings is made before final disposal of the case.

(ii) When an ex parte decree or final order has been passed in any case under the Act, the same may be set aside by the Court on sufficient cause being shown, if application for setting aside the ex parte decree or final order is made within the limitation period prescribed in Article 123 of the Schedule to the Limitation Act, 1963. Sections 5 and 12 of the Limitation Act, 1963 shall apply to any such application as well as to restoration application under the preceding rule.

**20. Evidence by affidavit.**

Where any party proposes under the proviso to Section 51 of the Act to verify his case by affidavit, such affidavit or affidavits must ordinarily be filed and copy(ies) supplied to the other party at least two days before the next date fixed for the hearing of the case. Ordinarily, the other party shall forthwith apply, if necessary, to the Court for directions as to the deponents being produced for cross-examination at the hearing.

**21. Security for costs of commission.**

When an order is made for the examination of a witness on commission or *de bene asse*, a wife may apply for security for her costs of the examination at the time of the order or subsequently by petition.

**22. Petition to reverse decree.**

A petition to the Court under Section 26 of the Act for reversal of a decree of judicial separation must set out the grounds on which the petitioner relies.

**23. Subsequent pleadings and proceedings.**

All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition and answer thereto so far as such directions are applicable.

**24. Application to show cause.**

Where the High Court removes from the Court of any District Judge any petition for dissolution of marriage and tries the same itself, any person wishing to show cause under Section 16 of the Act against making absolute a *decree nisi* shall apply ex parte by petition to the High Court for leave to show cause; if the leave be granted, such person shall within thirty days from the date of the order enter an appearance in the case in which such *decree nisi* has been pronounced and file affidavits setting forth the facts upon which he relies, and shall within further thirty days serve self-attested copies of such affidavits on the party or the counsel for the party in whose favour the *decree nisi* has been pronounced.

**25. Affidavits in answer.**

The party in the suit in whose favour the *decree nisi* has been pronounced may within thirty days after delivery of the affidavits file affidavits in answer, and the person showing cause against the *decree nisi* being made absolute may within next thirty days file affidavits in reply.

**26. No affidavit in rejoinder without leave.**

No affidavits shall be filed in rejoinder to the affidavits in reply without leave of the Judge and subject to any direction by the Judge, the matter shall be heard and decided in the same manner as provided in the case of an original petition.

**27. Six months between *decree nisi* and absolute.**

The *decree nisi* shall not be made absolute till after the expiry of not less than six months from the day on which the *nisi decree* was pronounced.

**28. Petition for alimony pendente lite.**

In any suit under the Act, a wife may file a petition under Section 36 of the Act for expenses of proceedings and alimony pending the suit. The petition shall be supported by affidavit or verified in the manner required by law for the verification of pleadings. The petition shall be disposed of at the earliest and ordinarily within two months of the filing thereof.

**29. Answer thereto.**

The husband may within fourteen days or such further time as may be allowed file an answer thereto supported by affidavit or duly verified as required by law for a pleading.

**30. Petition for permanent alimony.**

A petition by wife under Section 37 of the Act for permanent alimony shall be made to the Court and shall be supported by affidavit. Such petition should ordinarily be disposed within six months of the service of notice of the petition on the husband.

**31. Date when payment under Section 37 to commence.**

Monthly or weekly sums ordered to be paid to a wife for her maintenance and support under Section 37 of the Act shall, unless otherwise ordered, commence from the date of the decree.

**32. Interim order.**

Pending the final determination of a petition under Section 37 of the Act, an interim order may be made upon such terms as shall appear to the Court to be just and without prejudice to the effect of the order to be ultimately made.

**33. Application under Section 40 of the Act.**

Application under Section 40 of the Act shall be made to the Court. The Court may make such reference for enquiry or report and to such officer as it may think fit but no order for the settlement of a wife's property or for the settlement of damages or for variation of settlements shall be made except by the Court.

**34. Application under Section 41 or Section 43 of the Act.**

Application for interim orders under Section 41 or Section 43 of the Act shall be made by petition to the Court and shall be supported by affidavit.

**35. Application under Section 42 or Section 44 of the Act.**

Application under Section 42 or Section 44 of the Act shall be made by petition, which shall be verified as required by law for a plaint and which together with a notice returnable before the Court shall be served personally upon the party or parties to be affected thereby except where leave shall

have been obtained from the Court to dispense with such service or to substitute some other form of service.

**36. Showing cause.**

Any such party may show cause against the petition by filing affidavits or by filing an answer verified as required by law in the case of a pleading.

**37. Application under Section 8/17 of the Act**

An application to the High Court under Section 8/17 of the Act to remove a suit or proceedings from the court of any District Judge shall be made in the manner laid down in Chapter 1 of the High Court Rules and Orders, Volume V for filing of cases.

**38. Extension of time.**

The time fixed by these rules for the performance of any act may, in any particular case, be enlarged by the orders of the Court subject to such terms and conditions as to costs or other matters as the Court may think fit to impose.

**39. Execution of decrees and orders.**

Section 55 of the Act provides that all decrees and orders made by the Court under the Act shall be enforced (executed) as if made in the exercise of its original civil jurisdiction. For detailed instructions, reference may be made to Rule 75 of Chapter-23 of Volume I of the High Court Rules and Orders.

**40. Register to be maintained.**

Every Court shall maintain a register in which the details regarding petitions shall be entered. The register shall conform to Civil Register No. III maintained for Divorce and Matrimonial Cases.

**41. Repeal**

The Indian Divorce (Punjab) Rules, 1956 are hereby repealed.

## Chapter 2

### Rules under the Special Marriage Act, 1954

In exercise of the powers conferred by Section 41 of the Special Marriage Act, 1954(No. 43 of 1954) and all other powers enabling it in this behalf, the Punjab and Haryana High Court hereby makes the following rules:-

#### 1. Short title:

These rules may be called the Special Marriage (Punjab and Haryana High Court) Rules, 2015.

#### 2. Definitions:

In these rules, unless there is anything repugnant in the subject or context \_\_

- (a) 'Act' means the Special Marriage Act, 1954 (No.43 of 1954).
- (b) 'Section', 'Sub-section' and 'Chapter' mean, respectively, Section, Sub-section and Chapter of the Act.
- (c) All other terms and expressions used herein but not defined shall have the meanings respectively assigned to them in the Act.

#### 3. How proceedings to be originated:

Proceedings under the Act shall be originated by filing a petition to which shall be attached a certified or self attested copy of the certificate of the marriage.

#### 4. Title of petition:

All such petitions shall be titled as follows:-

In the District court at \_\_\_\_\_

Case No. \_\_\_\_\_ of 20 \_\_\_\_\_

Matrimonial jurisdiction

In re: the Special Marriage Act, 1954.

A.B. Petitioner

Versus

C.D. Respondent

E.F. Co-respondent

Petition under Section(s) \_\_\_\_\_ of the Special Marriage Act,  
1954

**5. Contents of the petition:**

A petition under Chapter V or Chapter VI of the Act shall state:-

- (i) The date and place of marriage.
- (ii) The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition.
- (iii) The principal permanent addresses where the parties have cohabited, including the address where they last resided together.
- (iv) Whether there have been previous proceedings with regard to the marriage by or on behalf of any party; if so, what proceedings and the result thereof.
- (v) Whether any child was born of the marriage and, if so, the date and place of birth and the name and sex of each child separately; and whether alive or dead.

(vi) The matrimonial offences charged, set in separate paragraphs with the times and places (as far as practicable) of their alleged commission.

(vii) The grounds on which the relief has been prayed.

(viii) There is no collusion or connivance between the parties.

**6. Petition on ground of voluntary sexual inter-course with other person:**

(i) In any petition presented for divorce or judicial separation on the ground that the respondent has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall make such other person a co-respondent. The petitioner may, however, be excused from doing so on any of the following grounds with the permission of the Court:-

(a) that the petitioner knows of no such particular person;

(b) that the name of such person is unknown to the petitioner despite efforts made to discover the same;

(c) that such person is dead;

(d) any other good cause shown.

(ii) In any such petition, the petitioner shall be required to give particulars, as nearly as the petitioner can, of the act(s) of alleged voluntary sexual intercourse committed by the respondent with any other person.

**7. Prayer of petition:**

The petition shall conclude with a prayer setting out the particulars of the relief claimed, including the amount of any claim as permanent alimony and maintenance and any order for custody of children.

**8. Signature of petitioner/applicant:**

Every petition/application under the Act shall be signed by the petitioner/applicant or some other person duly authorized by him.

**9. Verification of petition/application:**

Every petition/application under the Act shall be verified in the manner provided by Order VI Rule 15 of the Code of Civil Procedure for verification of pleadings.

**10. Presentation of petition:**

Every petition under Chapter V or Chapter VI of the Act shall be presented in the manner provided in Chapter 2 of Volume 1 of the High Court Rules and Orders for presentation of plaint.

**11. Affidavit of non-cohabitation etc.:**

If divorce is claimed on the ground provided in Section 27(2) of the Act, the petition shall be accompanied by an affidavit of the petitioner to the effect that there has been no resumption of cohabitation or restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation or for restitution of conjugal rights, as the case may be.

**12. Notice to respondent:**

(i) A notice of every petition/application under the Act shall be issued to each respondent to appear and answer the claim on the date to be therein specified:

Provided that no such notice would be necessary when the respondent appears at the time of presentation of the petition/application.

(ii) Every such notice shall be accompanied by a copy of the petition/application. The required number of copies of the petition/application shall be supplied by the petitioner/applicant at the time of its presentation.

**13. Notice how served:**

Notice of the petition/application shall be served by the Court on each respondent in the manner prescribed in the Code of Civil Procedure and in Chapter 4 of Volume 1 of the High Court Rules and Orders for the service of summons or notice on a defendant or respondent.

**14. Divorce by mutual consent.**

These rules pertaining to petition for divorce shall, so far as may be, also apply to petition for divorce by mutual consent.

**15. Answer to petition/application:**

A respondent who has entered an appearance may within time limited by the notice file in the Court an answer to the petition/application. Such answer will be signed and verified in the manner required by rules 8 and 9. A copy of the answer shall be delivered to the petitioner.

**16. Reply to answer:**

Where in any petition for divorce or judicial separation or restitution of conjugal rights, the respondent makes a counter claim under Section 35 of the Act for any relief under the Act on the ground of petitioner's adultery, cruelty or desertion, the petitioner shall file a reply to the answer within 30 days from the date of filing the answer. Save as aforesaid, no pleading subsequent to the answer shall be delivered except by the leave of the Court.

**17. Restoration of petition dismissed in default:**

If any petition has been dismissed in default for non-appearance or for non-prosecution of the same, the Court may restore the same on an application presented within 30 days from the date of the order of dismissal, if sufficient cause is shown for the restoration. But where the petition has been dismissed in the presence of the respondent, the same shall not be restored unless notice of the restoration application is served on the respondent.

**18. Setting aside of ex parte orders/decrees:**

(i) When ex parte proceedings have been ordered against the respondent in any case, the same may be set aside by the Court on sufficient cause being shown, if application for setting aside the ex parte proceedings is made before final disposal of the case.

(ii) When an ex parte decree or final order has been passed in any case under the Act, the same may be set aside by the Court on sufficient cause being shown, if application for setting aside the ex parte decree or final order is made within the limitation period prescribed in Article 123 of the Schedule to the Limitation Act, 1963. Sections 5 and 12 of the Limitation Act, 1963 shall apply to any such application as well as to restoration application under the preceding rule.

**19. Application for permanent alimony:**

An application under Section 37 of the Act for permanent alimony and maintenance shall be made to the Court and shall be supported by an affidavit of the applicant.

**20. Alimony pendente lite:**

Pending the final determination of any petition filed under the Act, an interim order on the application of the wife filed under Section 36 of the Act may be made in her favour for expenses of proceedings and weekly or monthly amount payable by the husband for her maintenance and support on such terms as shall appear to the Court to be reasonable. Such an application shall ordinarily be disposed of within sixty days from the date of service of notice on the husband.

**21. Extension of time:**

The time fixed by these rules for the performance of any act may, in any particular case, be enlarged by the order of the Court subject to such terms and conditions as to costs or other matters as the Court may think fit to impose.

**22. Register to be maintained:**

Every Court shall maintain a register in which the details regarding petitions shall be entered. The register shall conform to Civil Register No. III maintained for Divorce and Matrimonial Cases.

**23. Execution of decrees and orders:**

Section 39A of the Act provides that all decrees and orders made by the Court under the Act shall be enforced (executed) as if made in the exercise of its original civil jurisdiction. For detailed instructions, reference may be made to Rule 75 of Chapter-23 of Volume I of the High Court Rules and Orders

**24. Repeal:**

The Special Marriage (Punjab High Court) Rules, 1956 are hereby repealed.

### **Chapter 3**

#### **Rules under the Hindu Marriage Act, 1955**

In exercise of the powers conferred by Section 21 of the Hindu Marriage Act, 1955 (No. 25 of 1955) and all other powers enabling it in this behalf, the Punjab and Haryana High Court hereby makes the following rules:-

#### **1. Short title.**

These rules may be called the Hindu Marriage (Punjab and Haryana High Court) Rules, 2015.

#### **2. Definitions.**

In these rules, unless there is anything repugnant in the subject or context-

- (a) 'Act' means the Hindu Marriage Act, 1955 (No.25 of 1955).
- (b) 'Section', 'Sub-section' and 'Chapter' mean, respectively, Section, Sub-section and Chapter of the Act.
- (c) All other terms and expressions used herein but not defined shall have the meanings respectively assigned to them in the Act.

#### **3. How proceedings to be originated.**

Proceedings under the Act shall be originated by filing a petition in the Court. Every such petition shall be accompanied by a certified or self attested copy of extract from the Hindu Marriage Register maintained under



- (iii) The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition.
- (iv) The principal permanent addresses where the parties have cohabited, including the address where they last resided together.
- (v) Whether there have been previous proceedings with regard to the marriage by or on behalf of any party, if so, what proceedings and the result thereof.
- (vi) Whether any child was born of the marriage and, if so, the date and place of birth and the name and sex of each child separately; and whether alive or dead.
- (vii) The matrimonial offences charged, set in separate paragraphs with the times and places (as far as practicable) of their alleged commission.
- (viii) The facts on which the claim to relief is founded.
- (ix) There is no collusion or connivance between the parties.
- (x) The averments regarding requirements of various Clauses of Sub-section (1) of Section 23 of the Act.
- (xi) The property, if any, as mentioned in Section 27 of the Act.

**6. Petition on ground of voluntary sexual inter-course with other person.**

- (i) In any petition presented for divorce or judicial separation on the ground that the respondent has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall make such other person a co-respondent. The petitioner may, however, be excused from doing so on any of the following grounds, with the permission of the Court:-

- (a) that the petitioner knows of no such particular person;
  - (b) that the name of such person is unknown to the petitioner despite efforts made to discover the same;
  - (c) that such person is dead;
  - (d) any other good cause shown.
- (ii) In any such petition, the petitioner shall be required to give particulars, as nearly as the petitioner can, of the act(s) of alleged voluntary sexual intercourse committed by the respondent with any other person.
- (iii) Every such petition shall be accompanied by an affidavit of the petitioner to the effect that the petitioner has not in any manner been accessory to or connived at or condoned the act(s) complained of.

**7. Prayer of petition.**

The petition shall conclude with a prayer setting out the particulars of the relief claimed, including the amount of any claim as permanent alimony and maintenance and any order for custody of children.

**8. Signature and verification of petition/application.**

- (i) Every petition/application under the Act shall be signed by the petitioner/applicant or some other person duly authorized by him.
- (ii) Every petition/application under the Act shall be verified in the manner provided by Order VI Rule 15 of the Code of Civil Procedure for verification of pleadings.

**9. Presentation of petition.**

Every petition under Chapter III or Chapter IV of the Act shall be presented in the manner provided in Chapter 2 of Volume 1 of the High Court Rules and Orders for presentation of plaint.

**10. Affidavit of non-cohabitation etc.**

If divorce is claimed on the ground provided in Section 13(1A) of the Act, the petition shall be accompanied by an affidavit of the petitioner to the effect that there has been no resumption of cohabitation or restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation or for restitution of conjugal rights, as the case may be.

**11. Application for leave under Section 14 of the Act.**

(i) Where any party to a marriage desires to present a petition for divorce within one year of the marriage, he or she shall obtain leave of the Court under Section 14 of the Act on ex parte application made to the Court.

(ii) The application shall be accompanied by the divorce petition intended to be filed bearing the proper court-fee, and in accordance with the rules. The application shall set out the particulars of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent on which leave is sought and shall be supported by affidavit of the petitioner. The petitioner may also annex affidavits of other persons in support of the application, if so required.

(iii) The application shall be, so far as may be, decided within two weeks (without issuing notice to the respondent, notwithstanding anything contained in Rule 12).

(iv) When the Court grants leave, the divorce petition shall be deemed to have been instituted on the date of the order granting leave. The divorce petition shall then be registered and proceeded in accordance with law.

## **12. Notice to respondent.**

(i) A notice of every petition/application under the Act shall be issued to each respondent to appear and answer the claim on the date to be therein specified:

Provided that no such notice would be necessary when the respondent appears at the time of presentation of the petition/application

(ii) Every such notice shall be accompanied by a copy of the petition/application. The required number of copies of the petition/application shall be supplied by the petitioner/applicant at the time of its presentation.

## **13. Notice how served**

Notice of the petition/application shall be served by the Court on each respondent in the manner prescribed in the Code of Civil Procedure and in Chapter 4 of Volume 1 of the High Court Rules and Orders for the service of summons or notice on a defendant or respondent.

## **14. Answer to petition/application**

A respondent who has entered an appearance may within time limited by the notice file in the Court an answer to the petition/application. Such

answer will be signed and verified in the manner required by Rule 8. A copy of the answer shall be delivered to the petitioner.

**15. Reply to answer.**

Where in any petition for divorce or judicial separation or restitution of conjugal rights, the respondent makes a counter claim under Section 23A of the Act for any relief under the Act on the ground of petitioner's adultery, cruelty or desertion, the counter claim shall be made according to requirements of a petition, including impleading of alleged adulterer as party to the case. In the case of counter claim, the petitioner shall file a reply to the answer within 30 days from the date of filing the answer. Save as aforesaid, no pleading subsequent to the answer shall be delivered except by the leave of the Court.

**16. Restoration of petition dismissed in default.**

If any petition has been dismissed in default for non-appearance or for non-prosecution of the same, the Court may restore the same on an application presented within 30 days from the date of the order of dismissal, if sufficient cause is shown for the restoration. But where the petition has been dismissed in the presence of the respondent, the same shall not be restored unless notice of the restoration application is served on the respondent.

**17. Setting aside of ex parte orders/decrees**

(i) When ex parte proceedings have been ordered against the respondent in any case, the same may be set aside by the Court on sufficient cause being

shown, if application for setting aside the ex parte proceedings is made before final disposal of the case.

(ii) When an ex parte decree or final order has been passed in any case under the Act, the same may be set aside by the Court on sufficient cause being shown, if application for setting aside the ex parte decree or final order is made within the limitation period prescribed in Article 123 of the Schedule to the Limitation Act, 1963. Sections 5 and 12 of the Limitation Act, 1963 shall apply to any such application as well as to restoration application under the preceding rule.

**18. Application for permanent alimony.**

An application under Section 25 of the Act for permanent alimony and maintenance shall be made to the Court and shall be supported by an affidavit of the applicant.

**19. Alimony pendente lite.**

Pending the final determination of any petition filed under the Act, an interim order on the application of either the wife or the husband filed under Section 24 of the Act may be made in favour of the applicant for expenses of proceedings and monthly amount payable by the non-applicant for maintenance and support of the applicant on such terms as shall appear to the Court to be reasonable. Such an application shall ordinarily be disposed of within sixty days from the date of service of notice on the non-applicant.

**20. Extension of time.**

The time fixed by these rules for the performance of any act may, in any particular case, be enlarged by the order of the Court subject to such

terms and conditions as to costs or other matters as the Court may think fit to impose.

#### **21. Register to be maintained**

Every Court shall maintain a register in which the details regarding petitions shall be entered. The register shall conform to Civil Register No. III maintained for Divorce and Matrimonial Cases.

#### **22. Execution of decrees and orders**

Section 28A of the Act provides that all decrees and orders made by the Court under the Act shall be enforced (executed) as if made in the exercise of its original civil jurisdiction. For detailed instructions, reference may be made to Rule 75 of Chapter-23 of Volume I of the High Court Rules and Orders.

#### **23. Divorce by mutual consent.**

These rules pertaining to petition for divorce shall, so far as may be, also apply to petition for divorce by mutual consent.

#### **24. Repeal.**

The Hindu Marriage (Punjab) Rules, 1956 are hereby repealed.

## Chapter-4

### Rules under the Family Courts Act, 1984

In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984 (Central Act 66 of 1984), and all other powers enabling it in that behalf, the Punjab and Haryana High Court hereby makes the following rules, to regulate the proceedings of the Family Courts in the States of Punjab and Haryana and Union Territory of Chandigarh.

#### 1. Short title and commencement.

- (i) These rules may be called the Punjab and Haryana High Court Family Courts Rules, 2015.
- (ii) They shall come into force on the date of publication in the Official Gazette and shall apply to the Family Courts established under the Family Courts Act, 1984 in the States of Punjab and Haryana and Union Territory of Chandigarh.

#### 2. Definitions.

In these Rules unless there is anything repugnant in the subject or context,-

- (a) “**Act**” means the Family Courts Act, 1984;
- (b) “**Family Court**” means a Family Court established under Section 3 of the Act;
- (c) “**High Court**” means the Punjab and Haryana High Court.
- (d) Words and expressions defined in the Act shall, wherever used in these Rules, be construed to have the same meanings as respectively assigned to them in the Act.

#### 3. Sittings of Courts.

(i) The Family Court shall hold its sittings at such place as the High Court may specify from time to time.

(ii) Subject to general superintendence of the High Court, a Family Court may hold its sittings at places other than its ordinary place of sitting and also on any authorized holiday where the Presiding Judge is of the opinion that such a sitting will tend to the general convenience of (a) the parties, (b) the witnesses or (c) Institutions or Organizations or persons referred to in Section 5 of the Act.

(iii) A Family Court may, after consulting parties (if present) and for any reason considered sufficient by it, hold or continue its sitting outside normal working hours, whether on any working day or on authorized holidays.

(iv) No act of Family Court shall be invalid by reason of holding or continuing its sitting outside normal working hours or on any holiday or at any place other than the principal seat.

#### **4. Working Hours.**

(i) The normal working hours of the Family Courts shall be the same as that of Civil Courts subordinate to the High Court as provided in the High Court Rules and Orders or as may be directed by the High Court.

(ii) A Family Court may hold sitting on holidays and outside normal working hours, if the Judge considers it necessary to do so, in the circumstances of a case, with prior intimation to the parties and to such other person or persons as the Judge may consider necessary.

#### **5. Calendar.**

The Calendar of the Court shall be the same as that of the Civil Courts.

#### **6. Administrative Control.**

The administrative control over the Family Courts shall vest in the High Court.

#### **7. Institution of Proceedings.**

(i) All causes for the relief(s) envisaged under the provisions of the Act shall be by way of petition(s).

(ii) A petition shall be filed in Punjabi in Gurmukhi script or in English in the Family Courts established in the State of Punjab, in Hindi in Devnagri script or in English in the Family Courts established in the State of Haryana, in Punjabi in Gurmukhi script or in Hindi in Devnagri script or in English in the Family Courts in Union Territory, Chandigarh.

#### **8. Contents of petition.**

In addition to the particulars required to be given under Order VII, Rule 1 of the Code of Civil Procedure, 1908 and Section 20(1) of the Hindu Marriage Act, 1955, every petition for restitution of conjugal rights, judicial separation, nullity of marriage or dissolution of marriage shall contain the following particulars:-

- (a) The date and place of the marriage;
- (b) Religion of the parties at the time of the marriage and at the time of filing the petition and the law applicable;
- (c) The status and places of residence of the parties to the marriage before the marriage and at the time of filing the petition;
- (d) The principal permanent address where the parties have cohabited, including the address where they last resided together;
- (e) Whether there have been previous proceedings with regard to marriage by or on behalf of any party, if so, what proceedings and the result or status thereof;

- (f) Whether any child was born of the marriage and if so, the date and place of birth and the name and sex of each child separately; and whether alive or dead;
- (g) The matrimonial offences charged set in separate paragraphs with the times and places (as far as practicable) of their alleged commission;
- (h) The facts on which the claim to relief is founded;
- (i) There is no collusion or connivance between the parties;
- (j) Averments regarding requirements of various clauses of sub-section (1) of Section 23 of the Hindu Marriage Act, 1955, if the petition is under the said Act or requirements of corresponding provision, if any, of any other law applicable to the parties;
- (k) The property, if any, as mentioned in Section 27 of the Hindu Marriage Act, 1955 or corresponding provision, if any, of any other law applicable to the parties;
- (l) Provision of law under which the petition is filed.

**9. Petition on ground of voluntary sexual inter-course with other person**

- (i) In any petition presented for divorce or judicial separation on the ground that the respondent has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall make such other person a co-respondent. The petitioner may, however, be excused from doing so on any of the following grounds, with the permission of the Court:-
  - (a) that the petitioner knows of no such particular person;
  - (b) that the name of such person is unknown to the petitioner despite efforts made to discover the same;
  - (c) that such person is dead;

- (d) any other good cause shown.
- (ii) In any such petition, the petitioner shall be required to give particulars, as nearly as the petitioner can, of the act(s) of alleged voluntary sexual intercourse committed by the respondent with any other person.
- (iii) Every such petition shall be accompanied by an affidavit of the petitioner to the effect that the petitioner has not in any manner been accessory to or connived at or condoned the act(s) complained of.

#### **10. Affidavit of non-cohabitation etc.**

If divorce is claimed on the ground provided in Section 13(1A) of the Hindu Marriage Act, 1955 or corresponding provision, if any, of any other law applicable to the parties, the petition shall be accompanied by an affidavit of the petitioner to the effect that there has been no resumption of cohabitation or restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards (or any other requisite period as per law applicable to the parties) after the passing of a decree for judicial separation or for restitution of conjugal rights, as the case may be. Such petition shall also be accompanied by a certified copy of the said decree.

#### **11. Prayer of petition.**

- (1) The petition shall set out at the end relief(s) sought including any claim for -
  - (i) Custody, maintenance and education of children;
  - (ii) Permanent alimony and maintenance; and
  - (iii) Costs.
- (2) Where a claim is made for maintenance and education of children and/or permanent alimony and maintenance, the petition shall specify the annual or

capital value of the respective properties of the parties, the amount of their respective monthly or annual earnings and other particulars relating to their financial resources.

## **12. Presentation of petition.**

(1) Every petition under the Act shall be presented in the manner provided in Chapter-2 of Volume I of the High Court Rules and Orders for presentation of plaint.

(2) A petition for dissolution of marriage by mutual consent may be jointly presented by the parties.

## **13. Service of Process.**

Every notice/process shall be served in the manner prescribed under the Code of Civil Procedure, 1908 and the High Court Rules and Orders:

Provided that in the proceedings under Chapter IX of the Code of Criminal Procedure, 1973, the notice/process shall be served in the manner prescribed under the said Code and the High Court Rules and Orders.

## **14. Efforts for settlement.**

(i) The Family Court may associate Counsellor(s) and/or Institutions, Organizations or persons referred to in Section 5 of the Act, for reconciliation or settlement.

(ii) The Family Court may, at any stage of the proceedings, take assistance of any of the relatives or friends of the parties, social workers or experts for bringing about reconciliation/settlement between the parties.

## **15. Duties of the Counsellors**

- (i) The Family Court may direct the Counsellor-
  - (a) to meet the parties;
  - (b) to interview the relatives, friends or acquaintances of the parties;
  - (c) to seek such information as he may deem fit from the employer, if any, of the parties.
- (ii) The Family Court may request the Counsellor to submit a report on any subject which may be necessary for adjudicating the matter pending before it.

**16. Secrecy to be maintained by the Counsellor.**

The information gathered by the Counsellor, any note or report prepared by him or any statement made before him shall be treated confidential. The Counsellor shall not be called upon to disclose such information, statement, note or report to any Court except with the written consent of the party concerned. The Counsellor shall not be called upon to give evidence in the Family Court in respect of any such information, statement, note or report. However, as and when directed by the Family Court, the Counsellor shall submit a report relating to home environment of the parties, their personal ties and relations with their child or children in order to assist it in deciding the question of custody or guardianship or maintenance of such child or children or maintenance/alimony to be granted to either of the parties.

**17. Settlement before the Counsellor**

When the parties to the dispute arrive at a settlement before the Counsellor, the same shall be reduced into writing and shall be signed by the parties and counter-signed by the Counsellor. Such settlement shall be submitted to the Family Court which may, after hearing the parties and satisfying itself that the

settlement is voluntary, just and fair, pass decree in terms thereof, or with the consent of the parties, with such amendment or modification, as may be considered necessary in the interest of justice.

**18. Interim applications.**

(i) All applications made for interim relief and other miscellaneous applications shall be disposed of as expeditiously as possible in accordance with law and the provisions of these rules.

(ii) For the purpose of deciding interim applications/miscellaneous applications, the Family Court may direct the Counsellor to submit interim report.

**19. Supply of Copies**

Copies of every judgment/order passed by the Family Court finally disposing of the petition/application for interim relief shall once be supplied to the parties free of cost on an application made for that purpose.

**20. Counsellor to pay visit to child.**

The Counsellor shall, if directed by the Family Court, pay visit including surprise visit to the house where the child resides and submit report. The Family Court may then pass appropriate order relating to the custody of the child, after notice to the parties.

**21. Other Rules**

(i) The rules framed by the High Court in relation to subject-matter of suits or proceedings referred to in explanation appearing below Section 7(1) of the Act and cases under Chapter IX of the Code of Criminal Procedure, 1973, shall, as far as practicable and in so far as they are not inconsistent with the Act and these rules, apply to the proceedings before the Family Court. It is clarified that Rules framed

by the High Court under the Divorce Act, 1869, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 shall accordingly apply to cases filed in the Family Courts under the said Acts.

(ii) The rules framed by the High Court in the matter of payment of expenses to the witnesses pertaining to Civil Court shall apply to the proceedings before the Family Court.

**Chapter 5**  
**Guardians and Wards**  
**A-General**

**Civil Judges empowered to try cases under the Act.**

Under Section 4-A(1) of the Guardians and Wards Act, 1890, the High Court may empower any Officer exercising original civil jurisdiction subordinate to a District Court to dispose of any proceedings under this Act transferred to such officer under Section 4-A *ibid*. In exercise of the said powers and in modification of earlier notifications on the subject, the High Court vide notification No. 222-Gaz.II/XVA.13 dated 11.6.96 has empowered the Civil Judge (Senior Division) in each District to dispose of any proceedings under the Act transferred to him by the District Judge of the same District. The High Court by the same notification has also empowered the Additional Civil Judge (Senior Division) at Sub Divisional Headquarters for the trial of cases under the Act.

**Minor's welfare is the main consideration in appointing guardians.**

In appointing guardians, Courts should work on the principle that the welfare of the minors is the main or paramount consideration. The Courts should be guided by the provisions of Section 17 of the Act and should take into consideration the matters stated in sub-section (2) thereof. Preference of the minor, if he is old enough to form an intelligent preference, should also be considered. Very often it will be found that an application for the appointment/declaration of a guardian is made in the interest not of the minor but of the applicant. Courts should be very careful in appointing/declaring guardians of minors. Any person should not be appointed or declared to be a guardian against his will.

**Discretion of Court.**

Merely because an application is made for the appointment of a guardian, it is not the requirement of law that one must necessarily be appointed. Court has discretion in the matter.

The Court should issue notice of the application only if it is satisfied, may be after examination of the applicant, that there is ground for proceeding on the application under Section 11 of the Act. Even then the Court should exercise careful discretion as to the persons to whom notice should be issued, particularly under Section 11(1) (a) (iv) of the Act. It should also be noted that in cases specified in Section 19 of the Act, the Court has no power to appoint or declare a guardian under the Act.

**Reasons for rejection in limine.**

If any application is rejected in limine, the Court must give its reasons for rejection because such an order is appealable under Section 47 of the Act.

**B-Rules made by the High Court**

In exercise of the powers conferred by clauses (ff) and (j) of subsection (1) of Section 50 of the Guardians and Wards Act, 1890 and all other powers enabling it in this behalf, the High Court makes the following rules for the levy of fee for the audit of Guardians and Wards accounts and for the guidance of the Courts in carrying out the purposes of the Act.

(Note:- These rules do not require approval of the State Governments)

**1. Short Title.**

These rules may be called the Guardians and Wards (Punjab, Haryana and Chandigarh) Rules, 2015.

**2. Application for appointment/declaration of a guardian.**

Application for the appointment/declaration of a guardian of the person or property or both, of a minor shall contain, so far as can be ascertained, the particulars required by Section 10(1) of the Act and also stating the name and address of the person in present possession of the property of the minor. The application shall be signed and verified by the applicant or duly authorized person on his behalf in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaint. The application shall also be accompanied by a declaration of the willingness of the proposed guardian to act as such, signed by him and attested by at least two witnesses.

**3. Notice.**

The notice required by Section 11 of the Act shall be accompanied by a copy of the application. Requisite number of copies of the application shall be supplied by the applicant. The notice shall require the applicant to appear in person or through authorized agent or Advocate and to file reply to the application within 30 days of the service of the notice. Notice of the application to the general public shall state the name and address of the minor, the applicant and the proposed guardian and shall require any person interested to similarly appear and file reply.

**4. Statement of property and debts of the minor.**

If so required by the Court under clause (b) of Section 34 of the Act, the statement showing the property and the debts of a minor shall be in Form A annexed to these rules.

Only one such statement shall ordinarily be exhibited by the guardian within the time fixed by the Court. However, the Court may also call for another statement or statements. The guardian shall also inform the Court of any subsequent accrual of property to the minor and submit any statement with respect to it that may be called for. The Court shall carefully examine the statements submitted under this rule and pass any further order that may appear necessary for the proper management of the property.

**5. Guardianship Certificate.**

When a guardian is appointed/declared under the Act, he should be furnished with a certificate of guardianship in Form B annexed to these rules, with such variations or modifications as the circumstances of each case may require, and his attention should be drawn in particular to the provisions of Sections 26, 27, 28, 29, 32, 33, 35, 36, 37, 39, 41, 44 and 45 of the Act. The certificate shall also state any special restrictions imposed by the Court on the powers of the guardian.

**6. Bonds required from guardian:**

Unless the Court for reasons to be recorded directs otherwise, every guardian of property of a minor appointed/declared by the Court (other than the Collector of the District) shall be required to execute a bond, with or without a surety/sureties as the Court may think fit, in a sum not less than the total estimated value of the property. Such bond shall be in Form C

annexed to these rules with such variations or modifications as the circumstances of each case may require.

**7. Order by the Courts.**

Order in respect of the execution or otherwise of any such bond and the amount of the allowance, if any, to be paid to the guardian shall be made by the Court at the time of appointing/declaring the guardian. The Court shall also fix the time within which such bond, if any, is to be furnished and the order of appointment/declaration of guardian shall be made conditional on furnishing the bond.

**8. Entry of application in Register.**

Every application for appointment/declaration of a guardian shall be entered in Civil Register No. II of Miscellaneous Cases.

**9. Scrutiny of accounts.**

When the annual income of the minor's estate appears likely to exceed rupees fifty thousand, and in other cases if the Court thinks fit to so order, the guardian should be directed to submit to the Court once a year on a fixed date an account of the income and expenditure of the estate together with a list of the property, moveable or immovable, sold or purchased, and of the amounts due to and from the minor. Such account shall be scrutinized by the Presiding Officer, who should certify that he had done so and should record such remarks thereon as may be necessary. Continuous control is desirable only in the case of large properties whereas in other cases, the proceedings should ordinarily terminate with the appointment/declaration of the guardian and if so required, on the submission of the statement of the

property and the debts of the minor and the execution of the bond by the guardian.

**10. Cases to be treated as pending and minor to be produced before Court.**

When a guardian is required to submit yearly accounts to the Court, the case should, until the ward concerned attains the age of majority, be treated as pending and the ward should be produced before the Court on the dates fixed for furnishing of the accounts. Such dates, to be reckoned as dates of hearing, should also be entered in the Peshi Register of the Court.

**11. Notice of application under Section 28 or Section 29.**

When an application is made by a guardian for any of the purposes referred to in Section 28 and Section 29 of the Act, the Court should, before disposing of it, issue notice thereof to such persons, whether relatives of the minor or otherwise connected with him, as the Court may consider proper or likely to be effected by the application.

**12. Annual inspection of minors.**

In the absence of sufficient reason to the contrary, all male wards should be produced before the Court once a year on a fixed date and the Court should, so far as is possible, examine their physical, intellectual and moral conditions, and ask them whether they have any remarks to make on the work and conduct of the guardians or on the subject of the management of their estates.

**13. Inspection of statements and accounts.**

All statements and accounts furnished by a guardian should be kept on Part A of the records of the case concerned and may, with the permission of

the Court, be inspected by any person legitimately interested in the same, on payment of the ordinary inspection fee. Relevant extracts from Audit Notes and objections together with annotated reply thereof and relevant correspondence on the subject, should also be kept on Part A of the records.

**14. Opening of accounts in banks and investment of surplus money.**

Where the Court deems it necessary to direct the guardian to open an account in a bank, the account shall be in the name of the minor through his guardian in the Post Office Savings Bank or in any Nationalised Bank, or in any other bank approved by the High Court.

The money required for the current expenses of the estate and of the minor's maintenance and education etc. shall be placed in such an account which may be in any form i.e. current account, saving account or fixed deposit as will be in the best interest of the minor. The Court may direct that no withdrawal should be made by the guardian from such account except under the order of the Court. Any such restriction should be embodied in the guardianship certificate, or if a separate order to this effect is passed, an attested copy thereof should be forwarded to the bank for registration alongwith the attested copy of the guardianship certificate. The Court should see that the amounts kept in the bank are no larger than are sufficient for the aforesaid current expenses. If after payment of the current expenses of the estate and of the minor's maintenance and education etc., there should be any balance, such balance should be invested by the guardian in Government Promissory Notes, Post Office Cash Certificates, or in any other security authorized by the Central Government under Clause (f) of Section 20 of the Indian Trusts Act, 1882 or in any other securities mentioned in Clauses (a), (c), (d) and (ee) of Section 20 of the Indian Trusts

Act, 1882, or in debentures issued by the Trustees of the Port of Bombay under the Bombay Port Trust Act, 1879. The Court should see that all such surplus money is so invested.

All pass books, Government Promissory Notes, Post Office Cash Certificates and documents of other securities/debentures relating to accounts of minors should be kept by their guardians in safe custody and inspected by the Court atleast once a year.

Note 1: A list of other banks approved by the High Court is supplied to subordinate Courts and additions/alternations made therein are communicated from time to time.

Note 2: In order to enable a bank to open an account in the name of a minor through his guardian, an attested copy of the guardianship certificate should be supplied to it for registration.

#### **15. Investment of money if estate is under the management of Government.**

In a case in which the minor's estate is under the management of Government, through the District Judge, the Collector or other Government Officer, surplus moneys may be invested in Government Promissory Notes, purchased through and held in the safe custody of the Reserve Bank of India, in accordance with the procedure laid down in the Government Securities Manual. The Income of the estate required for current expenses of the management of the estate and of the minor's maintenance and education etc. should be deposited in bank account to be opened in the name of the minor in some Nationalised Bank. The deposit of money in a private bank in the name of the District Judge, the Collector or other Government Officer, as a guardian of a minor's estate, is prohibited.

#### **16. Order for proper education of the minor.**

When it appears to the Court, at the annual inspection of the minor or otherwise, that orders are required as to the education to the minor, the Court should pass such orders as appear to suit the case, regard being had to present position and future prospects of the minor's family and the intellectual capabilities of the minor himself.

#### **17. Audit fee.**

In order to meet the cost of audit of the guardians and minors accounts by Government, the Court shall require the guardian to credit two percent of the estate's Income into the treasury under the relevant Head. The audit fee thus credited and supported by the treasury challan shall be incorporated in the accounts of the estate concerned submitted to the Court annually by the guardian under Rule 9. The Court will not pass the accounts unless it is satisfied that requisite audit fee has been fully credited into the treasury.

The Guardianship Judge is authorized to waive recovery of audit fee upto a limit of ₹200/- in each case, if he is satisfied that it cannot be conveniently recovered or that the cost of its recovery is likely to exceed the amount to be recovered. All cases of non-recovery of audit fee exceeding ₹200/- must be reported to the High Court.

#### **Form A (Rule 4)**

In the Court of District Judge, \_\_\_\_\_.

Case No. \_\_\_\_\_ of 20 \_\_\_\_\_

Title of the case

#### **Part-A**

Statement under Section 34 showing particulars in regard to immovable and movable property belonging to \_\_\_\_\_ minor, taken

over by \_\_\_\_\_ appointed or declared as \_\_\_\_\_ guardian  
 under order of the Court, dated \_\_\_\_\_ 20 \_\_\_\_\_.

Sl.	IMMOVABLE PROPERTY						MOVABLE PROPERTY						REMARKS
	Particulars						Particulars						
	Land, building or vacant site.	Particulars (a)	How occupied (b)	Known or estimated value (c)	Estimated Income realizable	Period for which realizable	House hold goods or other property, estimated value	Jewels, gold and silver (weight and estimated value)	Govt. Securities etc.	Cash	In whose custody or with whom deposited	Estimated Income, if any	

(a) Here state whether land is nahri, chahi or barani, proprietary or occupancy, and as to building whether, kacha or pacca, one-storeyed or double-storeyed, etc.

(b) Here state whether cultivated through servants or relatives, or let on rent, or cultivated by tenants, and in case of building, whether occupied by minor or family or let on rent, or hire, etc.

(c) This will assist the Court in determining the amount of security to be taken from the guardian.

### Form A-(CONCLD)

In the Court of District Judge, \_\_\_\_\_.

Case No. \_\_\_\_\_ of 20 \_\_\_\_\_

Title of the Case

**Part-B**

Statement showing particulars as to the debts due to, or by the estate of \_\_\_\_\_ minor, for whose property and person \_\_\_\_\_ has been appointed or declared guardian by order of Court, dated \_\_\_\_\_ 20 \_\_\_\_\_

DEBTS DUE TO THE ESTATE OF THE MINOR								DEBTS DUE BY THE ESTATE OF THE MINOR							
Name, Percentage And address of debtor	Amount of debts originally advanced	Date of original advance	Date by which wholly repayable	Amount of interest or profit realizable	Date on which realizable	Date by which limitation expires	Proof in support of debts (a)	Name, parentage and address of creditor	Amount received originally	Date of incurring of the debt	Interest or profit payable	Date when interest or profit payable	Date fixed for repayment of the debt	Security given for debt	Remarks

(a) Whether registered or mortgaged bond or deed or book account etc.

**Form B (Rule 5)**

Form Of Appointment Under Section 7 Of Act No. VIII Of 1890

(Guardians and Wards Act)

In the Court of District Judge, \_\_\_\_\_

Case No. \_\_\_\_\_ of 20 \_\_\_\_\_

Title of the Case \_\_\_\_\_ Date of Order \_\_\_\_\_

Whereas this Court has, under the provisions of Section 7 of the Guardians and Wards Act, 1890 (Act No. VIII of 1890), been pleased to appoint/declare you, \_\_\_\_\_ to be guardian of (the property or the person or both) of \_\_\_\_\_ during the period of his minority, to wit, till the day of the month of \_\_\_\_\_ 20 \_\_\_\_\_ subject to the provisions contained in the Act and the rules framed thereunder and particularly those provisions contained in Sections 26, 27, 28, 29, 32, 33, 35, 36, 37, 39, 41, 44 and 45 of the Act aforesaid, you are hereby authorized to take charge of the property of the minor in trust, to collect and pay all just debts, claims and liabilities

due to or by the estate of the minor, to institute or defend suits connected with that estate and generally to do and perform all acts which may be necessary to the due discharge of the trust vested in you, provided always that you shall not mortgage, or charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of your ward, or lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which your ward will cease to be a minor, without the express sanction of this Court previously obtained; and that you shall keep regular accounts of your receipts and disbursements, with all vouchers and other documents necessary to establish their correctness, and shall carry out all orders issued to you by this Court under the aforesaid Act.

Given under my hand and the seal of the Court this \_\_\_\_\_ day  
of \_\_\_\_\_ 20

**Form C (Rule 6)**

Form of Bond under Section 34 of Act VIII of 1890

In the Court of District Judge \_\_\_\_\_.

Case No. \_\_\_\_\_ of \_\_\_\_\_

Title of the Case \_\_\_\_\_

Know all men by these presents that I Name of guardian \_\_\_\_\_ Parentage \_\_\_\_\_ etc. and the residence of the guardian of \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ District am held and firmly bound to (Name of District Judge) or \_\_\_\_\_ his successors in this office or his or their assigns in the sum of rupees \_\_\_\_\_ to be paid to the said District Judge \_\_\_\_\_, to his successors in this office or to his assigns and we \_\_\_\_\_ Name, parentage etc. and residence of sureties \_\_\_\_\_ District are jointly and severally held and firmly bound to

the said District Judge \_\_\_\_\_ or his successors in office or his or their assigns in the sum of Rupees \_\_\_\_\_ to be paid to the said District Judge \_\_\_\_\_ or his successors in office or his or their assigns for the payment of which said sum of Rupees \_\_\_\_\_ to be faithfully and truly made I the above bounden (Name of guardian) \_\_\_\_\_ bind myself and my heirs, executors, administrators and representatives and for the payment of the said sum of rupees \_\_\_\_\_ we the above-bounden (Name of surety) \_\_\_\_\_ and (Name of surety) \_\_\_\_\_ bind ourselves and each of us jointly and severally and one and each of our heirs, executors, administrators, and representatives firmly by these presents signed by ourselves and sealed with our respective seals this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

Whereas by an order of the court of the District Judge of \_\_\_\_\_ made on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ under section 7 of the Guardians and Wards Act (VIII of 1890) the above-named (Name of guardian) \_\_\_\_\_ has subject to his entering into a bond in rupees \_\_\_\_\_ with (Number of sureties) \_\_\_\_\_ sureties in the same \_\_\_\_\_ sum/the sum of Rs. \_\_\_\_\_ been appointed guardian of the property movable and immovable of (Name of minor) \_\_\_\_\_ minor son of (parentage of minor) \_\_\_\_\_ and whereas the said (Name of guardian) \_\_\_\_\_ has agreed to enter into the above-written bond and the said (Name of surety) \_\_\_\_\_ and (Name of surety) \_\_\_\_\_ have agreed to enter into the above-written bond as sureties for the said (Name of guardian) \_\_\_\_\_. Now the condition of the above-written bond is such that if the said (Name of guardian) \_\_\_\_\_ do and shall justly and truly account whenever called upon to do so for what he may receive in respect of the property of the said (Name of minor) \_\_\_\_\_ and shall

carefully observe, perform and obey all orders and directions of the said court of the District Judge of \_\_\_\_\_ touching or concerning the state and effects of the said minor and his property and touching and concerning all such money and estates as he the said (Name of guardian)\_\_\_\_\_ shall receive as such guardian as aforesaid and in all things conduct himself properly, then the above-written bond or obligation shall be void and of no effect otherwise the same shall remain in full force and virtue.

Signed and sealed by the above-named.

\_\_\_\_\_ seal

\_\_\_\_\_ guardian and sureties.

in the presence of (Name of witness)\_\_\_\_ seal

(Name of witness) seal

\_\_\_\_\_

\_\_\_\_\_

## **Chapter-6**

### **Insolvency Proceedings**

Note: (Chapter-4 of the existing (pre-revised) Volume-II of the High Court Rules and Orders relates to insolvency proceedings. This is a very lengthy Chapter consisting of 5 Parts and spread over almost 80 printed pages of the book. Part B comprises of Rules made by the State Government under Section 57 of the Provincial Insolvency Act, 1920 whereas Parts-C, D and E consist of Rules made by the High Court, with the previous sanction of the State Government, under Section 79 of the Act *ibid*. Part A contains general instructions.

Not many cases are instituted or pending under the Provincial Insolvency Act, 1920. Office has informed that in the entire State of Punjab, only 3 insolvency cases were instituted in the year 2012 and 9 such cases in the year 2013. In the entire State of Haryana, only 7 insolvency cases were instituted in each of the years 2012 and 2013. In Chandigarh, no such case was instituted in the year 2012 whereas only 1 case was instituted in the year 2013. In 16 out of 19 Districts of Punjab, not even a single insolvency case was instituted in the years 2012 and 2013. In Haryana, no insolvency case was instituted in 15 out of 20 Districts in each of the years 2012 and 2013. Office has also informed that at the end of July 2014 and August, 2014, only 40 cases and 37 cases respectively were pending in the entire State of Punjab whereas only 15 cases and 14 cases respectively were pending in the entire State of Haryana. In many Districts of both the States, not even a single case was pending. No case was either pending in Union Territory Chandigarh. Office has also informed that no such case was instituted in the months of July and August, 2014 in the entire State of Haryana or in Union Territory

Chandigarh. In the entire State of Punjab also, no such case was instituted in the month of August, 2014 whereas only 4 such cases were instituted in Ludhiana District in July, 2014 and no case was instituted in any other District of Punjab in July, 2014.

In view of the aforesaid, the Committee has not examined in detail, the Rules framed by the State Government as contained in Part B and Rules framed by the High Court as contained in Part-C, Part-D and Part-E because such an exercise would not be worth the effort to be made, because of the very small number of such cases. However, general instructions contained in Part-A have been looked into and some minor changes therein are being suggested in view of the developments subsequent to the framing of the said instructions.

Accordingly, Chapter-4 of the existing (pre-revised) Volume-II of the High Court Rules and Orders is proposed to be retained (with the aforesaid changes in Part-A) as Chapter-6 of the proposed revised Volume-II of the High Court Rules and Orders).

## **Part A**

### **1. Courts having jurisdiction to try insolvency cases. Priority should be given to insolvency work.**

Under Section 3 of the Provincial Insolvency Act, 1920, all District Courts are invested with jurisdiction under the Act and the State Government is also empowered to invest Courts subordinate to District Courts with concurrent jurisdiction. The then Punjab Government vide notification No.780, dated 15<sup>th</sup> July, 1914 (issued under corresponding Section 3 (1) of the Provincial Insolvency Act, 1907) invested all Subordinate Judges of the First Class [now comparable with Civil Judges

(Senior Division)] with jurisdiction in all classes of cases under the said Act. In supersession of the aforesaid notification, Union Territory Chandigarh Administration has issued similar notification dated 10<sup>th</sup> June, 1975 investing the Senior Subordinate Judge of the First Class- now Civil Judge (Senior Division)-with jurisdiction in all classes of cases under the said Act. Similarly, in supersession of the erstwhile Punjab Government notification No.780, dated 15<sup>th</sup> July, 1914, Haryana Government in exercise of the powers conferred by the proviso to sub-Section (1) of Section 3 of the Provincial Insolvency Act, 1920 has vide notification dated 08.7.1975 invested all the Courts of Senior Subordinate Judges of the First Class- now Civil Judges (Senior Division)- with jurisdiction in all classes of cases under the said Act.

However, insolvency cases should ordinarily be not entrusted to the Civil Judges but, if necessary, the same may be entrusted to Civil Judge (Senior Division) at the District Headquarter and not to any other Civil Judge.

Priority should be given to insolvency cases.

## **2. Forum of Appeal**

When a subordinate Court exercises concurrent jurisdiction, appeals from its orders lie to the District Judge. (Section 75)

## **3. Procedure to be followed**

Subject to the special provisions of the Provincial Insolvency Act, 1920, the Insolvency Court shall follow the same procedure as they do in the exercise of original Civil Jurisdiction (vide Section 5).

#### **4. Process fee chargeable for all notices issued**

The practice of charging no process fee in respect of notices sent to or served on creditors is against the provisions of Section 20 of the Court-fees Act under which process fee has to be charged for any mode of serving or executing a process or notice whether by post or through the ordinary process-serving agency.

#### **5. Notice by registered post and in Official Gazette**

It should be noted, particularly in connection with petitions involving a large number of creditors, that the publication in the Official Gazette is in itself a notice to creditors and it would be sufficient in most cases, especially of debtor's applications, to issue notice by registered post, and if the creditors do not attend, it will be because they expect that realization will not be worth the trouble. It may, of course, be necessary to take special steps to inform creditors for large amount or at distant places.

#### **6. The amount of debt and other conditions requisite for insolvency petition and summary administration.**

Conditions under which a debtor or his creditor can file a petition are laid down in Sections 10 and 9 of the Act. It is important to note, however, that Section 10 of the Provincial Insolvency Act has been amended by Section 3 of the Punjab Relief of Indebtedness Act, 1934.

According to Section 10 of the Provincial Insolvency Act, debtor is entitled to present an Insolvency petition if *inter alia* "his debts amount to Rs. 500". This limit has been reduced to Rs. 250 by Section 3 of the Punjab Relief of Indebtedness Act, 1934 in cases where the debtor can also satisfy the Court that he is entitled to summary administration of his estate under Section 74 of the Provincial Insolvency Act.

The benefits of summary administration were open under Section 74 of the Provincial Insolvency Act to those debtors only whose property was not likely to exceed in value Rs. 500. This limit has been raised to Rs. 2,000 by Section 4 of the Punjab Relief of Indebtedness Act, 1934 with the result that a wider circle of debtors is now entitled to take advantage of the summary procedure.

**7. Oral examination of the debtor and summary inquiry advised to dismiss dishonest applications.**

Section 10 of the Provincial Insolvency Act requires the debtor to prove *inter alia* that he is "unable to pay his debts". Section 24 of the Act provides that "*prima facie*" proof is sufficient for this purpose, but if the debtor is carefully examined by the court as required by enquiry, it will enable the court to dismiss *in limine* dishonest applications.

If the Court finds subsequently that an Order for adjudication ought not to have been made, the order can be cancelled at a later stage.

**8. Insolvency Court to inform proper authority**

(i) When a Government servant is adjudged an insolvent, the Head of Department concerned should be informed of the insolvency by the Court as soon as an order of adjudication has been passed.

(ii) Whenever an Advocate is adjudged an insolvent, or his order of adjudication is annulled or he is discharged, the Insolvency Court shall forthwith report the fact to the Bar Council of Punjab and Haryana. Similar report in the case of a petition-writer shall be made by the Insolvency Court to the District Judge who granted licence to the petition-writer.

**9. Period for application for discharge should be fixed in the adjudication order.**

When a person is adjudged an insolvent, the adjudication order must specify the period within which the insolvent is to apply for his discharge. (Section 27)

#### **10. Official Receivers should normally be appointed Receivers**

In view of Section 57 (2) of the Provincial Insolvency Act, 1920, where any Official Receiver has been appointed by the State Government, he shall be the Receiver in every case, unless the Court for special reasons otherwise directs. Therefore, Official Receivers should normally be appointed as Receivers. However, if any other person is to be appointed as Receiver, special reasons have to be recorded.

The proper administration of an insolvent's estate depends mainly on the efficiency of the Receiver, and the selection of a suitable Receiver requires, therefore, careful attention of the Court.

#### **11. Power of State Government to appoint Official Receiver**

The State Government is empowered under Section 57 of the Provincial Insolvency Act, 1920, to appoint Official Receivers for such local limits as it may prescribe. General rules as regards the appointment, remuneration etc. of Receivers other than the Official Receivers appointed under the Act are contained in Part-C of this Chapter.

#### **12. Distinction between an Official Receiver and Ordinary Receiver.**

The distinction between an Official and an Ordinary Receiver should be noted. An Ordinary Receiver is appointed by the Court (in each case separately) under Section 56 of the Act while an Official Receiver is appointed by the State Government under Section 57. It is provided under

Section 57(2) that where an Official Receiver has been appointed, he shall be the Receiver for the purpose of every order appointing a Receiver or an Interim Receiver "unless the Court for special reasons otherwise directs". The Official Receiver has the same powers as an Ordinary Receiver but is a Public Official and may in addition be invested with certain quasi-Judicial Powers under Section 80 of the Act. It is important to add, however, that an Official Receiver, even when invested with powers under Section 80 of the Act, is not a Court.

**13. Schedule of creditors and other necessary directions to be supplied to Receivers.**

The Receiver should be furnished with a copy of the Schedule of creditors (which must be prepared by the Court, vide Section 33) and should be given any further directions as regards his duties and administration of the estate as the Court may think necessary in each case.

**14. Schedules of the property and lists of creditors should be checked by a Court Official before delivering them to the Receivers.**

The Schedules prescribed in Forms (printed at the end of this Chapter) must be examined carefully in court when they are first presented with the Insolvency petitions as the entries in the Official Receivers' Registers are often incomplete because these schedules do not supply the requisite information.

The Courts should specially entrust the duty of checking these schedules to one of the Officials and ensure that it is carried out.

The lists put in by the insolvents should also be verified by the Court to see that they tally with each other before one copy is handed over to the Receiver.

**15. Insolvent's property vests in the Receiver including lands of members of agricultural tribes.**

On the appointment of a Receiver, all property of the insolvent, subject to certain exceptions, vests in the Receiver (*vide* Section 28) and can be utilized for the payment of his debts.

The Adaptation of Laws (Third Amendment) Order, 1951, has repealed the Punjab Land Alienation Act, 1900. The bar created by Section 16 of the said Act to the sale of the land of an agriculturist in execution of the decree or order of a Civil Court has thereby been removed.

**16. Adjudication order is a bar to fresh suits. Stay of pending suits optional but advisable.**

On the passing of an adjudication order, a creditor cannot institute a suit against the insolvent for the recovery of his debt, but must prove his debt in the Insolvency Court. However, pending suits may be stayed or continued on such terms as the trial Court may deem fit (Section 28-29). It is, however, advisable to stay the pending suits with liberty to the plaintiffs to approach the Insolvency Court for adjudication and satisfaction of their claims, to avoid delay to the claims of other creditors.

Insolvency petitions are sometimes kept pending for long periods in order to await the result of civil suits instituted by the creditors for the recovery of their debts in the ordinary courts. The correct course in such cases generally is to allow parties to move the civil courts concerned to stay suits in order that the plaintiffs' claim may be proved in insolvency as otherwise one creditor alone may hold up the insolvency proceedings and thus indirectly delay or prejudice the interest of other creditors.

**17. Adjudication order no bar to arrest of debtor in execution.**

Under the Provincial Insolvency Act, 1920, an adjudication order does not, by itself, confer on the insolvent any immunity from arrest in execution of decrees. It is left to the Insolvency Court to decide whether to grant him such protection and if so, to what extent (Section 31).

#### **18. Duty of insolvent to co-operate with the Receiver**

The insolvent is bound to assist in the administration of his estate in every way. If he fails to perform his duties or is found guilty of fraudulent conduct, he is liable to be prosecuted under Section 69. In such cases, however, the Insolvency Court is required to make a complaint to the Magistrate having jurisdiction (Section 70).

#### **19. Power of Insolvency Court to decide all the questions of titles, etc.**

Section 4 of the Act is very comprehensive and enables the Insolvency Court to determine all questions of title or priority arising in the Insolvency proceedings, which "the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case". However, though the Insolvency Court has wide powers to decide such questions, still in cases involving difficult questions and unusual complications, it is advisable to relegate the parties to a regular suit.

#### **20. Effect of insolvent not applying for discharge within the fixed period. Object of fixing such time.**

The provisions of Sections 41 to 43 of the Act, as regards the discharge, be carefully studied. The intention of the legislature in requiring the Court to fix a period in the adjudication order within which the insolvent must apply for discharge is to ensure that the conduct of the insolvent should in all cases be brought under review by the Court within a reasonable time.

If the insolvent does not apply for his discharge within the time, he is liable to have the adjudication annulled, and the result will be that he will not only not get back the property distributed amongst his creditors, but he will at the same time be still liable to arrest and imprisonment in execution of decrees against him.

**Note. 1:** Necessary formal changes, if any required, may be made in the Rules contained in Parts-B, C, D and E of this Chapter. For example, title of the Rules in Part C may be changed as ‘the Punjab, Haryana and Chandigarh Insolvency Rules’ instead of the existing title ‘the Punjab Insolvency Rules’. Similarly, the figure ‘19’ appearing in various forms to denote the year of 20<sup>th</sup> Century may be changed to ‘20’ to denote the year of the 21<sup>st</sup> Century.

**Note. 2:** Chapter 5 of existing (pre-revised) Volume-II of the High Court Rules & Orders contains administrative instructions in insolvency cases. The same as such (with necessary formal changes, if any required) may also be incorporated as Part F in this very Chapter-6 of the proposed revised Volume-II of the High Court Rules & Orders.

## **Chapter-7**

### **Probate, Letters of Administration and Succession Certificates**

#### **Part-A**

#### **Probate and Letters of Administration**

##### **1. Reference**

The present law of Probate and Letters of Administration is contained in Part IX (Sections 217 to 369) of the Indian Succession Act, 1925 which should be studied carefully while dealing with a case for the grant of Probate or Letters of Administration.

##### **2. Inventory and Accounts**

(i) According to Section 317 of the Act, a person, to whom a grant of Probate or Letters of Administration is made, is required to file a full and true inventory of the property and credits of the estate and of all the debts owed by the deceased to any person, in the court within six months from the date of grant or such further time as the Court may allow and also to similarly render accounts of the estate within one year from the date of grant or such further time as the Court may allow.

(ii) According to Section 318 of the Act, where the grant is intended to have effect throughout India, the executor or administrator shall include in the inventory all moveable and immoveable property of the deceased situated in India and the value of such property situated in each State shall be separately stated in the inventory.

(iii) The executor or administrator becomes liable to penalty for omission to comply with the furnishing of inventory or account and also for exhibition of an intentionally false inventory or account, as detailed in Section 317 of

the Act. Particular attention of the grantee should be invited to Section 317 of the Act and copy thereof should also be delivered to him so that there may be no excuse for failure to comply with the aforesaid requirements.

### **3. Form for grant of Probate and Letters of Administration**

The form for the grant of Probate is given in Schedule VI to the Act and that for the grant of Letters of Administration in Schedule VII.

### **4. Surrender of Probate or Letters on revocation**

Section 296 of the Act stipulates that when a grant of Probate or Letters of Administration is revoked or annulled under the Act, the Probate or Letters of Administration must be surrendered to the Court by the grantee. Penalty is provided for omission to comply with this requisition willfully and without reasonable cause.

### **5. Probate or Letters having effect in other State in certain cases**

(i) According to the first proviso to Section 273 of the Act, if the value of the property and estate affected beyond the limits of the State in which the grant of Probate or Letters of Administration is made, does not exceed ₹10,000/- and the deceased at the time of his death had his fixed place of abode within the jurisdiction of the District Judge making the grant, such Probate or Letters of Administration has effect, unless otherwise directed by the grant, throughout the other State(s).

(ii) Section 274 of the Act provides for the transmission to High Court and District Judges of the certificates of grants having effect in other State(s).

(iii) Sections 276 and 278 of the Act require the applicants to state the amount and locality of the assets situated in each State outside the State in which the application is made and also the District Judges within whose jurisdiction such assets are situate.

(iv) According to Section 283 (3) of the Act, copy of the citation, that may be issued under sub-section (1), is required to be sent to the District Judge (outside the State) in whose jurisdiction the property is situate.

(v) In the case of a Probate or Letters of Administration intended to have effect in another State(s), a certificate in the following terms should be endorsed at the foot of such grant:

“Certified that the value of the property affected beyond the limits of Punjab/Haryana/Union Territory Chandigarh by the foregoing grant does not exceed ten thousand rupees”.

sd/-,

District Judge

## **6. Contents of application**

Sections 276 and 278 of the Act prescribe the particulars to be stated in application for Probate and Letters of Administration respectively. Section 279 of the Act requires the applicants in certain cases to state whether or not application for Probate of the same Will or Letters of Administration of the same estate has been made to any other Court and if so, necessary particulars thereof.

## **7. Rules made under Sections 223 and 236 of the Act**

In exercise of the powers conferred by Sections 223 and 236 of the Act, the Central Government has, vide notification No. F.349/320-Judl., dated the 17<sup>th</sup> January, 1933 as modified by notification No. F.242/35, dated the 27<sup>th</sup> March, 1935 made the following rules:

1. In these rules
  - (a) **“Share Capital”** includes stock; and
  - (b) **“Trust business”** means the business of acting as trustee under wills and settlements and as executor and administrator.
2. The conditions to be satisfied by a company in order to render it eligible for the grant of probate or letters of administration under the Indian Succession Act, 1925, shall be the following, namely:
  - (1) The company shall be either
    - (a) a company formed and registered under the Indian Companies Act, 1913, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882, or a company formed under any other Act of the Governor-General in Council or of the Indian Legislature, or
    - (b) a company constituted under the law of the United Kingdom of Great Britain and Northern Ireland or any part thereof, and having a place of business in British India, or
    - (c) a company established by Royal Charter and having a place of business in British India.
  - (2) The company shall be a company empowered by its institution to undertake trust business.

(3) The company shall have a share capital for the time being subscribed of not less than

(a) ₹10 lakhs in the case of a company of the description specified in sub clause (a) of clause (1), and

(b) (Pound) 100,000 in the case of a company of the description specified in sub-clause (b) of clause (1) of which at least one-half shall have been paid up in cash:

Provided that the Central Government may exempt any company from the operation of this clause.

(Note: These powers to make rules have since been vested in the State Governments).

## **Part-B**

### **Succession Certificates**

#### **8. Introductory**

Sections 370 to 390 contained in Part X of the Indian Succession Act, 1925 relating to grant of Succession Certificates should be carefully studied and observed while dealing with any such case. Succession Certificates are granted for the collection of debts and securities of the deceased on succession.

#### **9. Civil Judges empowered to grant certificate and forum of appeal**

(i) In exercise of the powers conferred by Section 26(1) of the Succession Certificate Act, 1889 (corresponding to Section 388 of the Indian Succession Act, 1925), the Punjab Government vide notification No.781, dated the 15<sup>th</sup> July, 1914 invested all Subordinate Judges of the First and

Second Class (now corresponding to Civil Judges (Senior Division), and Civil Judges (Junior Division) having service of at least 3 years including training period respectively) with the functions of a District Court for granting succession certificates under the said Act. In view of Section 24 of the General Clauses Act, 1897, the said notification continues to be in force and is deemed to have been issued under the corresponding provision of the Indian Succession Act, 1925.

(ii) Applications under Part X of the Indian Succession Act, 1925 may ordinarily be dealt with by the empowered Civil Judges. In view of the proviso to sub-section (2) of Section 388 read with Section 384 of the Act, appeals from the orders of the Civil Judges granting, refusing or revoking succession certificates will lie to the District Judge. However, if the District Judge deals with any application under Part X of the Act as an original Court, the appeal will lie to the High Court under Section 384 (1) of the Act.

#### **10. Procedure for grant of Succession Certificates**

(i) As per existing interpretation of law, if a plaintiff or decree holder dies during pendency of the suit or execution proceeding, the same may be continued by his legal representatives without the necessity of obtaining a Probate or Letters of Administration or a Succession Certificate. However, in other cases, a Civil Court should not pass or execute a decree at the instance of a person claiming to be entitled to recover a debt or to execute the decree in favour of any deceased person, without the production of a Probate or Letters of Administration or a Succession Certificate. The grant of a Probate or Letters of Administration or a Succession Certificate is not an essential condition precedent to the institution of a suit but the requisite probate, letters or certificate must be produced before the passing of a

decree. However, in the case of a Joint Hindu Family when property passes by survivorship, no such Succession Certificate is necessary.

(ii) The word 'debt' as used in Section 214(1) of the Act includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes. The prohibition imposed by the preceding sub-rule on the Civil Courts does not, therefore, extend to Revenue Courts when dealing with suits under these heads.

(iii) Earlier there was doubt as to whether a Succession Certificate could be granted with respect to a fraction of a debt. However, vide the Indian Succession (Amendment) Act, 1928 (Act No.14 of 1928), new sub-section (3) was inserted in Section 372 of the Indian Succession Act, 1925, according to which application for Succession Certificate may also be made in respect of fraction or portion of any debt or debts due to the deceased creditor.

(iv) The particulars to be stated in an application for a Succession Certificate are specified in Section 372 of the Act. The application is required to be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint. If any averment in the application is found to be false, the person verifying it shall be deemed to have committed an offence under Section 198 of the Indian Penal Code.

(v) The proceedings in hearing such applications are summary in nature to some extent. Intricate questions of law and fact need not be gone into, the person having the best title *prima facie* being granted the certificate. However, the Court is not relieved of the obligation to hear the parties and take sufficient evidence to enable it to decide the person so entitled as well as all other necessary points to dispose of the application.

(vi) Persons objecting to an application instituted by another person may be heard without themselves becoming applicants, but every person opposing an application, who claims a Succession Certificate for himself, must file a proper application in the manner prescribed by Section 372 of the Act. All applications for Succession Certificate relating to the same deceased person may be consolidated and tried together and may be disposed of by a single common order.

(vii) In deciding which of the several applicants is entitled to a certificate, it is open to the Court to consider the extent of interest and the fitness in other respects of the applicants (Section 373 (4) of the Act).

(viii) In accordance with Section 372(1)(f) and Section 374 of the Act, the debts and securities in respect of which the Succession Certificate is applied for must be detailed in the application and also in the certificate which must be limited to the debts and securities as specified in the application and also in the certificate. The other particulars required in the certificate are also specified in Section 374 of the Act. The form prescribed for the certificate is given in Schedule VIII of the Act. Courts should be careful to see that certificates are properly framed and that all necessary particulars and powers are duly inserted in the first instance, so as to obviate the necessity for subsequent amendment of the certificate.

(ix) Section 376 of the Act empowers the Court to extend the certificate, on the application of the holder thereof, to any debt or security not originally specified therein. The Court also has power to otherwise amend the certificate under Section 378 of the Act.

#### 11. **Security from grantee of certificate.**

Section 375 of the Act mandates that in case of summary procedure followed under Section 373 (3) and also in a case where more applicants than one are found to be interested in the estate and procedure prescribed by Section 373(4) of the Act is followed, the Court is bound to demand security from the person to whom it proposes to grant the Succession Certificate as a condition precedent to such grant. The Court also has discretion to demand security in any other case.

**12. Court-fees.**

(i) According to Section 379 of the Act, every application for Succession Certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the court-fee payable under the Court-fees Act i.e. 2 per centum on the value of the debt or security specified in the Succession Certificate and 3 per centum on the value of the debt or security to which the certificate is extended (vide Article 12 of Schedule I of the Court-fees Act, 1870). The amount shall be deposited in revenue deposit in the Treasury.

(ii) The amount of court-fee should be calculated according to the scale in force on the date of the application and it is not affected by any subsequent change in the law.

(iii) If the application is allowed, the money is to be expended, under the direction of the Court, in the purchase of the court-fee stamps required for the certificate when granted. If the application is rejected, or if the sum deposited exceeds the sum eventually required for court-fee when the application is allowed, the deposit or surplus deposit (as the case may be) must be refunded to the depositor.

(iv) The Financial Commissioner has issued instructions to all Treasury and Sub-Treasury Officers that in all Succession Certificate cases, the ex officio vendor should issue court-fee stamps of the required denomination on production of a “Revenue Deposit Repayment Voucher” from the court concerned. The amount deposited in the Treasury as Revenue Deposit should be re-drawn on “Revenue Deposit Repayment Vouchers” for the purchase of court-fee stamps required for the certificate when granted. Court-fee stamps should be purchased direct from the Officer-in-charge of the Treasury/Sub-Treasury in the name of the applicant by making payment by “Revenue Deposit Repayment Voucher” drawn in favour of the Officer-in-charge who should, in turn, credit the amount to Government by transfer credit to the appropriate head of account.

### **13. Extent of certificate**

As per Section 380 of the Act, a Succession Certificate issued under Part X of the Act takes effect throughout India.

### **14. Revocation of certificate**

Provision is made in Section 383 of the Act for revoking a Succession Certificate on any of the grounds specified therein.

### **15. Supersession of Succession Certificate**

According to Section 215 of the Act, a grant of Probate or Letters of Administration supersedes a Succession Certificate granted under Part X of the Act.

### **16. Decision does not operate as res judicata**

By Section 387 of the Act, no decision given in an application under Part X of the Act, upon any question of right between any parties bars the adjudication or trial of the same question between the same parties by a competent Civil Court.

**17. Surrender of the Certificate**

According to Section 389 of the Act, the holder of a certificate which has been superseded or is invalid from any of the causes mentioned in Section 386 of the Act, is bound to deliver it up to the Court which granted it, on being required to do so by the said court, and the holder may be punished for willfully and without reasonable cause omitting to do so.

## **Chapter-8**

### **Preservation of Wills**

**Note1:-** Existing Part-A of Chapter-7 contains the regulations made by Punjab Government under Section 294 of the Indian Succession Act, 1925 for the preservation and inspection of Wills of which probate or letters of administration with the Will annexed are granted. These regulations do not require any significant amendment except that the amount of fee mentioned in Regulations 5, 6 and 8 may be increased in view of change in money value since the said regulations were made in the year 1929 and amended in the year 1941. The relevant head mentioned in Regulation 10 for crediting the amount of fees may also be updated. These minor changes have to be made by the State Governments.

**Note 2:** Existing Part-B of Chapter-7 of Volume-II contains instructions regarding keys of Will safes. The same also do not require any amendment.

Accordingly, existing Chapter-7 may be retained as Chapter-8 in the revised Volume-II with minor changes mentioned in Note-1 above.

**Chapter-9**  
**Civil Courts Accounts**  
**Part A**  
**General**

**1. Responsibility of Judicial Officers for supervision**

The institution of the local audit department does not relieve Judicial Officers of the duty of supervising nazirs, cashiers or other clerks in regard to their fiduciary duties connected with the attachment and sale of property, the expenses of witnesses in civil and criminal cases, the disposal of unclaimed property and fines, and the receipt and disbursement of sums paid into Court in execution of decree and miscellaneous civil and criminal proceedings without any sort of check or control on the part of the Judicial Officers who are primarily responsible for the due performance by them of these duties.

**2. Personal responsibility of officers for loss caused by negligence of law and rule, or supervision.**

As the Government is responsible for the due application of all property and money received in accordance with law by any Court of justice, the officer presiding over such Court may be held directly and personally responsible for any loss caused by failure to observe rules or neglect on his part to exercise supervision and control over the officials subordinate to him in accordance with law and the orders issued by the High Court in regard to the care, custody and disposal of attached or unclaimed property, and to sums paid into Court by litigants and others under the authority or by virtue of the provisions of the Codes of Civil and Criminal Procedure. The fact that security is taken from various subordinate officials under Chapter-29, High Court Rules and Orders, Volume-I, in no way relieves Judicial Officers

from their personal responsibility for the proper treatment and disposal of moneys made over to these officials.

The High Court desires to emphasize the importance which should be attached by all Judicial Officers and other Officers/officials to the safeguarding of Government money. In particular, Controlling and Disbursing Officers are required to exercise strict supervision over their subordinates who handle Government money as it is only by such vigilance that the public revenues can be protected and the possibility of frauds minimized.

**3. Periodical inspection of accounts, instructions re: pecuniary transactions.**

Controlling Judicial Officers are required periodically (at least once in a quarter) to inspect in a thorough and complete manner, the various registers and accounts maintained by nazirs, cashiers or other clerks; and every officer presiding over a court (whether civil or criminal) is further required to have all pecuniary transactions conducted under his personal direction and attested by himself.

**4. Checking of registers relating to pecuniary transactions by the Presiding Officers.**

In order to ensure careful examination of the accounts, every officer presiding over a Court (whether civil or criminal) should examine and check the registers of his Court relating to pecuniary transactions and the custody of property, frequently and at least once a month and should enter his initials and the date, after the last entry found in them. In discharging this duty, it is necessary to have each entry verified by the voucher which has been attested by the Judge and which is required to be placed on the record of the case to which the entry relates.

**5. Special attention towards state of registers and accounts of Nazirs.**

The state of the registers and accounts of Nazirs etc. should receive special notice in the reports of inspecting officers.

**6. (a) Timing for pecuniary transactions.**

For purposes of pecuniary transactions with litigants in respect of the Sheriffs' Petty Accounts and Civil Court Deposit Accounts, the Officer-in-charge of the Nazarat or the Presiding Officer of the Court, as the case may be, should, for the convenience of the litigants as well as the Officer himself, take up the matters at fixed hour(s) once or twice daily keeping in view the number of such transactions.

**(b) Notice at Court House**

Notice in English and vernacular should be posted on the Court's notice-board warning litigants in respect of deposits in the Sheriffs' Petty Accounts that incomplete receipts should be guarded against and that receipts are not valid unless signed by the Officer-in-charge of the Nazarat or the Presiding Officer of the Court, as the case may be. The notice should also warn the litigants that in Civil Court Deposit Accounts, the money will only be deposited by themselves in the local Treasury on challans given to them by the Court and that the receipts are not valid unless signed by the Treasury Officer.

**7. Postal Money orders: Money received during absence of the Presiding Officer.**

The rules for Sheriffs' Petty Accounts and Civil Court Deposit Accounts provide for the receipt of money in a court by postal money order. The procedure laid down in those rules must be strictly followed for all postal money orders, as it is with regard to money so received by a Court

that defalcation may occur if the procedure is not followed. It is the duty of Presiding Officers of Courts to make adequate arrangements for the receipt of money orders during their absence, and they are responsible for seeing with the least possible delay on their return to duty that money so received during their absence is duly brought to account.

#### **8. Daily checking of Cash Books**

Before leaving office each day, the Presiding Officers of all Courts shall check the cash balances in the hands of the Nazir or cashier and other clerks entrusted with the duty of maintaining accounts of monetary transactions, with the cash book or cash books of the Court which such official or officials maintain. They shall sign the books daily in token of check. Separate cash books are maintained as under:

Account	By whom maintained
Sheriffs' Petty Account	Civil Nazir, or Naib-Nazir or Cashier, as the case may be
Civil Court Deposit Accounts	Ditto
Copying Agency Accounts	Examiner, or senior copyist where no examiner exists
All other items, e.g., pay of staff, contingency, etc.	Civil Nazir, or Naib-Nazir or Cashier, as the case may be

#### **9. Checking in the Court of District and Sessions Judge**

In the Court of District and Sessions Judge, the Superintendent, being the senior most ministerial servant, is also responsible for checking the work of his subordinates, including the Nazir, and for seeing that the accounts are properly maintained and that all financial rules are observed.

## **Part-B**

### **Audit**

#### **10. Annual Audit.**

The Sheriffs' Petty Accounts, the Copying Agency Accounts and the accounts of property made over to the Nazir for custody, will be audited as far as possible once a year under the orders of the Accountant General by the Examiner, Local Fund Accounts or the Examiner, Outside Audit Department as the case may be and a staff of peripatetic auditors.

#### **11. Audit by Internal Audit Cell.**

The High Court has created an Internal Audit Cell on the establishment of the High Court for carrying out extensive audit of all the accounts maintained by all the subordinate Courts in Punjab, Haryana and Chandigarh, to exercise effective financial control, to ensure proper maintenance of accounts, to minimize the chances of embezzlement, misappropriation and defalcation of Government money and to liquidate and settle the outstanding audit objections, inspection reports and paragraphs concerning the subordinate Courts promptly, as communicated by the High Court to all the District and Sessions Judges in Punjab, Haryana and Chandigarh vide letter No.17666 Int.Audit Cell/I.C.5 dated the 15<sup>th</sup> July, 1978. The said audit is required to be undertaken at least once in two years to exercise check on the financial matters and also to advise and give proper guidance wherever necessary. Detailed instructions contained in the said letter (as updated and uploaded on High Court website) may be studied and kept in view.

#### **12. Papers to be placed at the disposal of Auditors.**

Presiding Officers of Courts should cause to be placed at the disposal of the auditors all account registers, documents, etc. as well as any subsidiary papers which may be required by the audit officers.

**13. Audit note to be sent to Court concerned and higher officers.**

The results of audit will be communicated in computer printed or typed audit and inspection notes to the Courts concerned, to the District and Sessions Judge, and to the High Court.

**14. Prompt attention to Audit notes.**

Presiding Officers of Courts, the Civil Judge (Senior Division) where he is the immediate controlling officer, and the District and Sessions Judge should deal promptly with these audit and inspection notes. The action taken/reply should be recorded in annotated form and forwarded to the concerned Examiner and the High Court through proper channel. It should also be kept and produced for the information of the Inspecting Officer. The objection statement which accompanies the audit and inspection note should, after the objections recorded therein have been replied to, be kept and put up before the auditors at their next visit.

**15. Inquiry into embezzlement, loss of property, etc.**

(a) Where embezzlement, loss of property etc. or a grave irregularity likely to lead thereto, is discovered, enquiries shall be instituted at once by the Presiding Officer of the Court and at the same time, a report made to the High Court through proper channel. Such cases as involve more than ₹2000/- or present important features which merit detailed investigation or consideration will also be reported by the Presiding Officer through the District and Sessions Judge to the Accountant General.

(b) In submitting final reports, the following points will be reported on to the High Court:-

(1) The exact nature of the defalcation.

(2) The full extent of the loss.

(3) The actual period covered by the defalcation.

(4) The defects in or neglect of rules by which the loss was rendered possible and the circumstances which facilitated the defalcations.

(5) The names of the officials held personally or technically, directly or indirectly, and wholly or partly responsible for the loss and irregularities committed, and the disciplinary action taken or proposed to be taken against each.

(6) Whether the case has been tried judicially or not, and if not, why? If so, copy of the judgment should be forwarded.

(7) The remedial measures adopted as safeguards against recurrence of such defalcations or irregularities.

(8) The prospects of recovery of the loss.

(c) Circular letters of the Punjab Government, Finance Department vide Memorandum No.30161-F, dated 30<sup>th</sup> September, 1929, letter No.21204(Fin.-Genl.), dated 17<sup>th</sup> July, 1934 and letter No.42841 (Fin.-Genl.), dated 16<sup>th</sup> December, 1935 describe the procedure to be adopted on the discovery of defalcations and the principles for the assessment of personal responsibility which should be carefully followed. The said letters can be accessed at the High Court website.

**16. Refund of money kept out of account not allowed.**

Experience has shown that Presiding Officers frequently fail to take any effective action when irregularities are brought to their notice. There must be a complete investigation of every complaint made to a Presiding Officer. In no case may a subordinate official be allowed to refund money which has been kept out of account, without a report to the higher authorities. Any such permission given by a Presiding Officer will be treated as a gross breach of discipline.

**17. Destruction of records relating to audit.**

No records or documents filed in any Court's accounts should be destroyed till a period of one year has elapsed since they were last audited, and if at the last audit, any objection or remark was raised in connection with any record or document, such record or document should be retained until the next audit and not be destroyed until one year has elapsed since the removal of the objection originally raised.

This does not apply to those records which under the rules of the Court form part of a case and are filed with the Court.

**Part-C**

**Sums Deposited in Courts as Compensation for Land Acquisition Payable to Persons with Restricted Powers.**

**18. Money to be deposited in the Treasury.**

Money paid into the District Court under Section 31 of the Land Acquisition Act, 1894 must be lodged into the Treasury as a Revenue or Civil Court deposit under the rules applicable to such deposits, until its investment as required by Section 32 *ibid*.

**19. Register of such deposits to be maintained.**

A register shall be maintained in each District Court to show the receipt and disposal of deposits made therein by the Land Acquisition Officer under Section 31(2) of the Land Acquisition Act, 1894 on behalf of minors and any other persons to whom the deposits cannot be paid on disposal of the case.

**20. Contents of the register.**

This register shall contain particulars as to the name of each person to whom compensation is payable, the case, the amount and the final disposal thereof either by investment or by payment to guardian or purchase of land etc.

**21. Procedure for disposal of money deposited.**

After the deposits are made and brought on the register, the Court shall proceed to take action in regard to the investment or disposal of money deposited in accordance with the instruction contained in Sections 32 and 33 of the Land Acquisition Act, 1894.

**22. Account to be opened when money is invested otherwise than in the purchase of land.**

When the money is invested otherwise than in the purchase of land, an account in the ledger form should also be opened for the person on whose behalf the money is invested to show payment of interest and final disposal.

**Part-D**  
**Sheriffs' Petty Accounts**  
**Section-I**  
**System of Accounts**

**23. Items included**

Sheriffs' Petty Accounts relate to sums received by Officers-in-charge of process serving agencies and intended for immediate disbursement. The majority of such items consist of diet money for witnesses, and also include such items as expert fees or commission fees. A detailed list of items which may properly be included in these accounts is given in Schedule A to these rules. No item should be deposited in this account if it should under other rules be credited direct to Revenue Heads.

**24. Surplus amounts to be sent to Treasury daily and at the close of the month.**

The sums so received being petty, and the money being intended for immediate disbursement, these items form an exception to the general rule which forbids the appropriation of receipts to expenditure. The Nazir or Cashier is allowed to receive the money in cash, without remitting it to the Treasury and to make payments out of the money in his hand. A limit is, however, imposed, and the Officer-in-Charge must remit the surplus to the Treasury whenever the balance in his hand exceeds the said limit. He should also remit to the Treasury the total balance in his hands on the last working day of the month. In respect of these balances, the Treasury acts merely as a banker, and the full responsibility for maintaining detailed accounts rests with the Officer-in-charge of the agency.

**25. Registers**

(a) A detailed list of the registers and forms to be maintained in the agencies is given in Schedule B to these rules; and specimens of the registers and forms are also reproduced there. There are two principal registers of receipts and of disbursements known as “Register of Receipts” and “Register of Disbursements”. There is also a “Cash Book”.

**(b) How entries in the Register of Receipts are to be made. Progressive total and balances.**

The “Register of Receipts” is in itself complete and should be confined to money received either in cash or by money order. The entries in the register should be made strictly in the chronological order of receipts as they occur. i.e., the number of receipts issued should be serially noted in column 2 of the register. Whenever any entry of disbursement is made in the “Register of Disbursements”, the item is again entered in the “Register of Receipts” against the original deposit, with a view to guard against improper disbursements. Progressive totals of daily receipts should be made beneath the daily total and continued till the end of the month. From the monthly progressive total, the total payment as per the “Register of Disbursements” is to be deducted to arrive at the net balance at the end of each month, which should be carried forward from month to month to work out the progressive net balance at the end of the year. This balance should agree with the total of the balances appearing in the Treasury and cash columns in the “Cash Book” (vide sub-paragraph (d) below). An analysis of the outstanding balances at the end of each month should also be prepared in the remarks column of this register. The balance for each month going back to the three complete financial years should be worked out separately from the “Register of Receipts” and the total of the items thus worked out proved with the balance in the “Cash Book”.

(c) **Progressive totals of payments.**

Similarly, the “Register of Disbursements” is complete and should be confined to a daily record of payments to entitled payees. The daily entries should be totalled up and the progressive totals of daily payments should also be made beneath the daily total till the end of the month.

(d) (i) **Cash Book**

The daily totals of receipts in the “Register of Receipts” and of payments in the “Register of Disbursements” will be carried to the “Cash Book” in the cash column, the closing balance of the previous day being noted as opening balance of the next day. Payments into and withdrawals from the Treasury should be accounted for in this “Cash Book” in the manner described below.

(ii) **Entries in Cash Book of Payments into and withdrawals from Treasury**

When the amount is paid into the Treasury, an entry will be made on the payment side in the column “cash” and a per contra entry will be made on the receipt side in the column “Treasury”. Similarly, when money is drawn from the Treasury, an entry will be made on the payment side in the column “Treasury” and a per contra entry will be made on the receipt side in the column “cash”. Progressive balance on each day should be struck under the signatures of the “Officer-in-charge”.

(iii) **Comparison of Cash Book with Treasury Pass Book**

At the close of the month, there will be no cash balance in the hand of the Nazir. The balance with the Treasury as per Treasury column in cash book should be worked out and agreed with the balance as shown in the Treasury Pass Book.

## **26. Duties of the Officer-in-charge**

The principal financial duties of the Officer-in-charge of an agency may be briefly summarized:

- (i) to see that all sums received are brought to account in the “Register of Receipts”;
- (ii) to see that no payments are made except against deposits shown in the “Register of Receipts”;
- (iii) to verify the balance by frequent physical verification of the cash balance in the agency and by comparison of the treasury balance shown in the “Cash Book” of the agency with that shown in the “Treasury Pass Book”;
- (iv) to see that remittances into and withdrawals from the Treasury when required are promptly and correctly made; and
- (v) to ensure that the Cash Book is properly, correctly and regularly maintained.

If these duties are properly carried out, there would be no risk of defalcation and any clerical error in the accounts would be immediately detected.

## **27. Personal Ledger Account in the Treasury**

In respect of the balances remitted thereto, the Treasury maintains a Personal Ledger Account in the name of the agency concerned the working of which is described in detail in Section IX of these rules.

## **28. Proper forms and registers to be maintained**

No books of account other than those prescribed may be maintained, and no change may be made in the existing forms of the registers. However, if for any reason, any change is required or additional registers are found necessary, the Officer-in-charge of agency may seek permission of the High Court to introduce them.

It has been frequently noticed in the course of inspection that the registers in use are not in the proper form. Every effort should be made to obtain the registers in proper forms or at least Peshanis be pasted to blank/ruled registers.

#### **29. Money orders Intermediate Register**

Whenever money is received by money order, the Nazir must first enter particulars to identify the transaction in the "Court's Intermediate Register". The Officer-in-charge of the agency or in his absence another Judicial Officer empowered in this behalf by the District Judge will then both initial the "Intermediate Register" in respect of the transaction and sign the money order receipt before handing over the receipt to the postman and the money with the money order coupon to the Nazir for further disposal. Such an officer must see that all items in the "Intermediate Register" are cleared by transfer entries to the appropriate "Register of Receipts" on the day of receipt if possible or the next morning and initial both the "Intermediate Register" and the "Register of Receipts" in verification of this having been done by the Nazir.

## **Section II**

### **Agencies**

#### **30. Classes of agencies**

There are four classes of agencies which are required to maintain Sheriffs' Petty Accounts. The Office maintaining these accounts is usually known as the Nazarat. The four classes are as follows:

- (i) The principal process-serving agency at the headquarters of a district. This deals with processes received from Civil, Revenue and Criminal Courts. This agency is under the control of the Civil Judge (Senior Division). It will be referred to as Agency of the Civil Judge (Senior Division).
- (ii) The District Judge's agency in those Districts in which the District Judge has been allowed to maintain a separate agency.
- (iii) The Small Cause Court's agency, which is under the control of the Judge of the Small Cause Court.
- (iv) Agency at an outlying station which is in the charge of the Judicial Officer/the senior most Judicial Officer at the station.

#### **31. Local agent**

The agencies of the District Judge and the Civil Judge (Senior Division) are in the subordinate charge of a Naib-Nazir and a Civil Nazir respectively, who receives cash and makes payments. In the Small Cause Court of Amritsar, the same duties are performed by a Cashier. In outlying stations, they are performed by a Naib-Nazir or a Madad Naib-Nazir. For the sake of simplicity, the official concerned will be referred to in these rules as the Nazir or the local agent.

### 32. **Control over agencies. Delegation of duties**

The principal Judicial Officer-in-charge of the agencies mentioned in Rule 30 is responsible for the prompt and efficient service of all processes received in his agency. The Civil Judge (Senior Division) is also responsible for general control of all agencies at outlying stations. The Civil Judge (Senior Division) or the Judge of a Small Cause Court may, under special permission from the High Court, delegate certain of his administrative duties either to another Civil Judge or to a Registrar. The order of delegation should state exactly what duties have been delegated. In such cases, however, they will still remain responsible for general supervision. District Judges and Officers-in-charge of outlying agencies may in no case delegate their duties.

### 33. (a) **Security**

Nazirs are responsible in the first instance for the proper upkeep of the accounts and for the security of the cash in their hands. Security is required to be deposited by them and by certain other members of the process-serving establishment as laid down in Chapter-29 of the High Court Rules and Orders, Volume-I.

Note:- No process server should have more than ₹500/- in hand at any one time.

### (b) **Duties of Civil Nazir**

The Civil Nazir is also the head of the process-serving establishment of the district, other than that working directly under the District Judge or the Judge of a Small Cause Court. His duties are:

- (i) to submit reports relating to the members of the establishment or their duties to the Civil Judge (Senior Division);
- (ii) to arrange for the distribution of processes among process-servers and the transmission of processes to agencies located at tehsils;
- (iii) to see that the prescribed accounts are properly maintained by the staff working under his immediate control; and
- (iv) to prepare correspondence regarding the payment of diet-money of witnesses and other similar matters.

#### **34. Inspection of accounts by inspecting officers**

District and Sessions Judges when inspecting subordinate courts should also invariably inspect the process-serving agencies' accounts and note the fact in their inspection reports that this has been done.

### **Section-III**

#### **Receipts of processes and Deposits by the Agencies**

#### **35. Applications for deposit: How to be dealt with**

(i) When an application involving a deposit in the Sheriffs' Petty Accounts is presented in Court, as for example, an application for summoning of witnesses for whom diet-money is to be deposited, the Court Reader shall mention the amount qua each witness and shall note on the application the number of the case, in order to enable the process-serving agent to make the necessary entry in the "Register of Receipts". After the usual orders have been passed and recorded by the Court, the applicant shall tender the amount of his deposit together with the application to the local

agent who will fill in columns 1 to 7 of the “Register of Receipts”, prepare a “Receipt” in foil and counterfoil on the prescribed form, and issue the foil to the depositor as a receipt for the money deposited after it is signed by the Officer-in-charge.

**Note:** If the application is for the summoning as a witness of a Government servant, it must state (1) his full official designation, (2) the amount deposited for travelling expenses and (3) the amount deposited for diet-money or subsistence allowance, and these details must be copied into the “Register of Receipts”.

(ii) After the serial number of the “Register of Receipts” with date has been noted on the application by the agent and the usual daily check exercised by the Officer-in-charge, the application should be returned to the Court concerned for necessary action. The counterfoil receipts will be retained by the agent and produced for audit.

**36. Processes for service within the district to be sent to local agent.**

All processes issued by Courts for service within the district should be sent to the local agent and should contain a reference to the amount, if any, deposited with the agent.

**37. Process for service in another district**

Processes issued by a Court for service in another district will be made over to the local agent by the issuing Court for entry in the Register in Form No.6 in Schedule B to this Part of the Chapter and transmission to the Civil Judge (Senior Division) of the District in which the person to be served resides. The amount deposited with the local agent on account of subsistence and other expenses as noted on the original and duplicate copy

of the process will be transmitted by the agent by postal money order to the Civil Judge (Senior Division) of the district in which service is to be effected, the cost of the postal money order being borne by the party at whose instance the process is issued. The Civil Judge (Senior Division) of such other district shall, in the event of the process not being served, return the amount by postal money order less cost of commission on such order.

### 38. **Steps to get back money if process not served**

Courts issuing processes to other districts should take measures to call for the prompt return of the money remitted on account of processes which have not been served, and such sums after being accounted for in the accounts of the local agent in the usual way should be returned to the person taking out the process, and excluded from the amount of the costs of the suit.

**Note-I** To ensure that all sums remitted to other districts on account of processes which have not been served, are duly returned and correctly accounted for, the Register in Form No.6 in Schedule B should in the case of the agencies of the District Judge, the Civil Judge (Senior Division), and the Small Cause Court, be checked monthly by Superintendent/Clerks of Courts and quarterly by the Officer-in-charge; and monthly by the Judicial Officers-in-charge in the case of agencies at outlying stations. Results of these checks should be recorded in the following form:

“Certified that I have personally checked the entries in the “Register of processes including warrants, etc., received from ----- Tehsil/District----- with/without diet money or Munadi fee by the Process-serving Agent at -----” for the month of/quarter ending ----- and am satisfied that all sums in respect of unserved processes have been duly received and correctly accounted for except as follows:

**Note-2:** processes received for service from other districts are also entered in the relevant volume of the Register in Form No.6 in Schedule B to this Part of the Chapter.

**39. Service of processes within the jurisdiction of local agent.**

Processes issued by a Court, for service on a person residing within the Tehsil where such Court is situated, will be made over to the local agent in charge of the process-serving agency. The local agent will thereupon arrange as follows for payment at the time of service of sums due to persons to whom the processes are addressed.

**Section IV**

**Transmission of processes and money to process-servers**

**40. Procedure when processes and money are delivered to Process-servers**

Such sums as are mentioned in Rule 39 will be given to the process-servers together with the processes, but before this is done, the following procedure must be carried out:

- (a) Each process should be entered in the “Register of processes received and disposed of by the local agent”.
- (b) Payment to process-server should be entered in the appropriate column of the “Register of Receipts” against each sum.
- (c) Payment entries should be made in the “Register of Disbursements” and the process-server’s acknowledgement of receipt in column 11.
- (d) Details of each sum should be entered in the “Process-server’s Notebook”.

**41. Payment to witness.**

When a process-server pays diet money to a witness, he shall take the receipt of the actual payee in column 8 of his note-book as well as on the back of the original copy of the process on which service is endorsed. The payee's acknowledgement should invariably be verified by one or more respectable witnesses, whose signatures also to be taken in column 10 of the note-book of the process-server, the date and signature of the serving officer being added on the back of the original copy of the process. To minimize the risk of mis-appropriation, the courts concerned should ascertain before proceeding with the cases that the witnesses appearing before them are the persons to whom the diet money has been actually paid.

**42. Procedure when processes are returned served by the Process-server**

The processes whether served or not will be returned to the local agent. If the service is effected and the money connected therewith paid to the payee, the local agent shall verify the service with the acknowledgement of the payee given in column 8 of the process-server's note-book as well as on the back of the original copy of the process, and submit the latter to the court concerned with the usual certificate of service, at the same time filling up columns 16 to 20 of the "Register of processes received and disposed of by the local agent."

**43. Procedure when processes are returned unserved**

In the case of non-service, the undisbursed amount returned by the process-server shall again be entered against a new number in the "Register of Receipts". The new number in the "Register of Receipts" should be quoted against the original entry in the "Register of Disbursements" and

noted in column 11 of the process-server's note-book, column 12 of which should also be signed by the agent in acknowledgement of the money having been received back from the process-server. The process will then be returned to the Court concerned with a certificate of non-service after filling up columns 16 to 20 of the "Register of Processes received and disposed of by the local agent."

**Note-1- Checking of process-servers' note-books.**-With a view to seeing that Rules 40 to 43 are complied with, the process-servers' note books should, in the case of the agency of the District Judge, be checked monthly by the Superintendent and in the case of the agencies of the Civil Judge (Senior Division) and the Small Cause Court, be checked monthly by the Clerks of the Courts. All these note books shall also be checked quarterly by the Officer-in-charge; and monthly by the Judicial Officers-in-charge in the case of agencies at outlying stations. The result of these checks should be recorded in the following form:

"Certified that I have personally checked the accounts for the month of/quarter ending -----and am satisfied that they are correct and in order except as follows:-"

**Note-2:** When unserved processes are returned to the local agent, it shall be the duty of the latter to see that undisbursed diet-money remitted with the processes is also returned to him and entered in the "Register of Receipts".

## **Section-V**

### **Transmission of processes and money between agencies in same district**

#### **44. Processes sent by one agent to another in the same district**

(i) Processes issued by a Court situated within the limits of one Tehsil (whether it be the headquarters Tehsil or any outlying one) for service on a person residing within the limits of another Tehsil in the same district will be made over to the agent at the place where the Court issuing the process sits and such agent will transmit the process (duly endorsed with the amount, if any, which is to accompany the process) by post or (where absolutely necessary) by messenger, to the agent of the Tehsil within which service is to be effected, after making the necessary entries in columns 1 to 15 of the “Register of processes received and disposed of by the local agent”.

(ii) Processes received by one agency from another in the same district will invariably be returned direct to the agent from whom they were received, and he will return them to the Court concerned.

#### **45. Amount to be sent by money order**

The amount to accompany a process transmitted under Rule 44 will, after making the usual entries in the “Register of Receipts” and the “Register of Disbursements”, be sent by postal money order to the agent concerned along with the process, the money order commission being recovered from the party at whose instance the process is issued and the money order being addressed to the Officer-in-charge (as defined in Rule 30 under section II) of the agency in which the agent works. The said Officer-in-charge shall take delivery of the money order over his own signature in the manner laid down

in Rule 29 under section 1 and he shall also see that the amount is transferred from the “Intermediate Register” to the “Register of Receipts” on the day of receipt if possible or the next morning. The agent after carrying out the procedure detailed in rule 40 (b), (c) and (d) under section IV shall cause the process to be served and the amount disbursed to the payee in the same manner as if the process had been issued by one of the Courts of his own agency.

**Note 1.-** Processes received from other Tehsils should be entered in the relevant volume of the Register in Form No. 6 in schedule B to this Part of the Chapter.

**Note 2.-** The officer-in-charge (as defined in Rule 30 under Section II) of the receiving agency must satisfy himself that all amounts accompanying a process transmitted under this rule have been brought on to the “Register of Receipts”.

#### **46. Procedure in case of non-service.**

In the case of non-service, the amount (less money order commission) will be returned by postal money order to the Officer-in-charge of the agency from whom it was received. The said officer shall take delivery of the money order over his own signature in the manner laid down in Rule 29 under section I and he shall also see that the amount is transferred from the “Intermediate Register” to the “Register of Receipts” on the day of receipt if possible or the next morning; such amount will be entered by the agent against a new number in the “Register of Receipts” which number should also be quoted against the original entry in the “Register of Disbursements”.

**47. Certificate of service or non-service.**

The agent to whom a process is sent for service will invariably return the same, with a certificate of service or non-service, as the case may be, duly endorsed thereon and signed by the Officer-in-charge, to the agent from whom he received the process, and the later will thereupon fill in the relevant Volume of Register in Form No. 6 in Schedule B to this Part of the Chapter and then forward the process to the Court which issued it.

**Note.**-The certificate of service or non-service should be signed by the Officer-in-charge after satisfying himself of the correctness of the certificate.

## **Section VI**

### **Refund of deposits**

**48. Refund of deposits-payment order. Undisbursed diet-money to be sent by money orders.**

Any undisbursed balance of a deposit will be paid to the depositor when a refund of the same is claimed by him. In such cases and in all other cases in which undisbursed money has been ordered by the court to be paid to the proper person, the court shall issue a "payment order" in the prescribed form to the local agent, who, after taking the payee's acknowledgement in the space provided for the purpose and making the necessary entries in the "Register of Receipts" and the "Register of Disbursements", will pay the amount due. The number to be quoted on the top of the "payment order" will be the serial number of the transaction in the "Register of Disbursements".

**Note (1).**-In accordance with Punjab Government letter No. 3679-S. (Home-Judl.), dated the 3rd August, 1931, and No. 4953-J-39/27606, dated the 24th

August, 1939, undisbursed witnesses' diet-money deposits in Civil, Criminal and Revenue cases should be returned without notice to the depositor by money order, the cost of the money order commission being deducted from the sum to be refunded. The courts should inform the Nazir of the cases in which judgment has been pronounced.

**Note (2).**-Before the record of a decided case is consigned to the Record Room, the Reader of the court shall attach to it a certificate that undisbursed deposits of diet-money payable to witnesses have in all cases, where necessary, been refunded to the depositors. The Record Keeper should not receive the record unless this certificate is attached to it.

**Note (3).**-The provisions of this rule and notes (1) and (2) are also applicable to repayment of deposits of advertisement charges of newspapers in cases of substituted service and of munadi fee.

#### **49. Payment order: Renewal and lapsing**

The Court's payment order referred to in the preceding rule will remain in force for a period of one month. No payment can be made on a lapsed order unless it is renewed in the following manner. On the production of a lapsed payment order, the authority which originally granted it may, if satisfied that the person producing it is entitled to receive payment, revalidate the order by the following endorsement:-

Renewed \_\_\_\_\_

Signed \_\_\_\_\_

Dated \_\_\_\_\_

The fact and date of renewal should be noted on the original departmental record of the Court. These payment orders will be kept in a guard file for audit purposes.

## Section VII

### Daily Supervision of Accounts

#### **50. Daily checking of the entries in the Receipt Register**

At the end of the day, the Officer-in-charge of the agency shall compare the entries made in the "Register of Receipts" with the applications and the counterfoils of receipts issued and, after satisfying himself of their correctness, should set his initials against each entry in column 8 of the "Register of Receipts".

#### **51. Daily attestation of entries by Officer-in-charge:-Certificate as to correctness of accounts for the period when officer was absent.**

All entries of receipts in "Register of Receipts" and of payments in "Register of Disbursements" and in the payment column of the "Register of Receipts" should be duly attested by the Officer-in-charge of the agency on the day of transaction before the office is closed for business. If, however, he is absent, the next senior most Judicial Officer available at the station should do so and if there be no other Judicial Officer at the station, the Officer-in-charge should within a week of his return check the accounts and forward a certificate to the District Judge that he has carefully scrutinized the records of all the monetary transactions which took place in his absence and has satisfied himself that they have all been brought to account and that no irregularities have been committed.

#### **52. Money order coupons and payee's postal receipts to be kept in guard file and reference to their number given in proper registers.**

Payee's receipts received through the post office for amounts sent by money orders under Section III, Rule 37, or under Section V, Rules 45 and 46, or Note I of Rule 48, or under the special orders of the Court, should be pasted in a guard file and a reference to their number in the guard file

inserted in column 11 of the “Register of Disbursements”. Similarly, coupons of money orders, if received, should be pasted in a separate guard file and a reference to their number in the guard file inserted in column 6 of the “Register of Receipts”.

### **Section VIII**

#### **Dealings with the Treasury**

#### **53. Remittances to Treasury. Documents to accompany.**

Whenever during the month the sum in the hand of the agent at the headquarters of a district is ₹20,000/- or more and that of a Sub-Division Agent is ₹10,000/- or more, the surplus over ₹20,000/- and ₹10,000/- respectively shall at once be remitted to the Treasury or Sub-Treasury. Each such remittance shall be accompanied by a memorandum in the form given below and the Treasury pass book and a challan (Stereo A and T Form 192) which will be returned to the agent duly receipted by the Treasury Officer or the Sub-Treasury Officer, as the case may be:

(1) Balance in hand (if any)	-----
(2) Withdrawals from Treasury since last remittance	-----
(3) Deposits received since last remittance	-----
Total	-----
Payments made since last remittance	-----
Balance	-----
Amount now remitted to the Treasury	-----
Balance in hand	-----

At the end of the month, the entire amount in the hand of the agent will also be remitted into the treasury or sub-treasury in accordance with the procedure indicated above.

#### **54. Withdrawals from Treasury**

On the other hand, in the rare cases when the balance in the hand of the Nazir falls below the amount required for immediate disbursement, he will recoup himself by means of a cheque on the Treasury to be signed by the Officer-in-charge after he has satisfied himself by personal inspection of the accounts that the withdrawal is necessary.

**Note.-** The cheque should be sent to the treasury along with the treasury pass book which will be returned to the agency after noting the withdrawals, duly attested by the Treasury Officer. Such withdrawals are in the nature of recoupment of an advance and should not be regarded as the repayment of a particular item by means of payment on the Treasury. The Nazir will remain responsible for individual disbursements.

#### **55. Transactions with Treasury to be entered only in Cash Book.**

Neither the surplus or balance paid into the Treasury, nor the amount withdrawn therefrom under the preceding rule, should be shown in the “Register of Receipts” and the “Register of Disbursements”. These remittances and withdrawals will be shown only in the “Cash Book” as their effect is to deplete or increase the amount in hand of the Nazir. These transactions will be shown in the manner prescribed in rule 25(d) (ii).

#### **56. Duty of Officer-in-charge**

The principal duties of the Officer-in-charge in this connection are to see that money is promptly remitted to the Treasury whenever the amount in

the Nazir's hand exceeds the permissible limit and that no unnecessary withdrawals are made, and also to watch that the balance in the hand of the Nazir, on the last working day of the month, is remitted to the Treasury so that it may be included in the accounts of the Treasury on that day. The monthly balancing of the account should show at a glance whether the Nazir had remitted to the Treasury the amount which he is supposed to have sent; and it is also necessary for the Officer-in-charge to satisfy himself that the remittances have been promptly made by reference to the treasury receipts which should be filed in a separate guard file.

## **Section IX**

### **Treasury Accounts**

#### **57. Personal Ledger and Pass Book**

The Treasury will maintain a Personal Ledger Account in form 44 Civil Account Code, in the name of each agency dealing with it and will supply the agency with a "Pass Book". The Pass Book should be sent monthly to the Treasury Officer, for verification of the balance shown in it.

#### **58. Entries of gross receipts and gross payments in Ledger and Cash Book.**

(a) On each occasion that a remittance is made to the Treasury, the gross receipts and gross payments noted in the memorandum prescribed in Rule 53 shall be entered in the receipt and payment columns, respectively, of the Personal Ledger Account and the amount actually credited into the Treasury added to the previous balance to arrive at the progressive balance to be shown in column 5 thereof. The amount remaining in the hand of the Nazir, at the time of each intermediate remittance should be noted in the remarks column.

In addition to being entered in the Ledger Account, the gross receipts and the gross payments shall be carried to the receipt and payment side of the Cash Book against the head “Sheriffs’ Petty Accounts”.

**(b) Entries to be made when amount is withdrawn.**

In the case of payments made from Treasury on cheques, the progressive balance as shown in column 5 shall be reduced and the amount noted in the remarks column (as amount in the hand of Nazir) in the manner provided in clause (a) above.

**(c) Reconciling difference between the balances as shown in the Treasury’s and Accountant’s balance sheets.**

As, however, in the case of the intermediate remittances described in Rule 53 above, the whole of the surplus of receipts over payments is not credited into the treasury, but part remains with the Nazir, as also in cases in which amounts are drawn by cheques from the treasury, it is clear that to enter gross receipts and gross payments in the cash book will result in a difference between the balances as shown in the treasury’s and accountant’s balance sheets. To reconcile the discrepancy, the amount remaining in the Nazir’s hand should be shown separately:-

(i) in the remarks column of the Personal Ledger Account;

and

(ii) in the accountant’s daily balance sheet, the entry in the last being on the same principle as the entry of a sub-treasury balance.

The treasury shall continue to show these balances in the balance sheet until the entry is cancelled by a corresponding credit at the treasury at the end of the month.

### **59. Deduction of lapsed deposits**

In addition to the gross receipts and gross payments as indicated in Rule 58, the other entry in the treasury account will be the annual deduction of lapsed deposits as reported by the agent, the adjustment of which shall be made in the office of the Accountant-General by credit to the relevant Head. The Treasury Officer will simply reduce the balance of the personal ledger account.

## **Section X**

### **Monthly verification of accounts**

#### **60. Comparison of balances in the books of the agent and the Treasury Pass Book.**

On the last working day of the month, the agency will proceed to compare the balance shown in its own books with the balance shown in the “Treasury Pass Books”.

**Note.**-The last working day of the month as referred to in this and the other rules in this Chapter means the last working day on which the accounts of the treasury or sub-treasury, as the case may be, are closed.

#### **61. Working out balance list of un-refunded lapsed items**

There will be three balances in the books of the Court. One balance will be struck at the end of the month in the “Register of Receipts” and will show the total amount outstanding from all previous deposits, less the amount which has lapsed to Government. This balance will be made up of two other balances: one will be the balance in cash with the Nazir as shown in the “Cash Book” and the other will be the balance of remittances to the Treasury as shown in the “Treasury Pass Book”. The comparison of the

balance in the “Cash Book” shall be made at the end of each month with the balance shown in the “Register of Receipts” as under:-

	Rs.	P.
Opening balance	.....	
Receipts for the month as per “Register of Receipts”	.....	
Total	.....	
Payments for the month as shown in the “Register or Disbursements”		
(plus lapsed items which will appear in March only)		
Closing balance	.....	
Details	.....	
Balance as per “Treasury Pass Book”	.....	
Balance in the hand of the Nazir as per “Cash Book”		
(which should be remitted to the treasury after verification on the last day of the month)	.....	
Total	.....	

At the end of each month, the Officer-in-charge of each agency should also prepare a list of un-refunded deposits not lapsed to Government working up to the balance (including the Treasury Balance). The balance for each month going back to three complete financial years should be worked out separately from the “Register of Receipts” and proved with the balance at the end of the month as depicted by the “Cash Book”.

## 62. **Physical verification of balance in the hands of the Nazir.**

The balance in the hand of the Nazir should be physically verified by the Officer-in-charge of the agency who should record a note as follows before it is remitted to the treasury:-

“I have myself today counted the cash in the hand of the Nazir under the Head “Sheriffs’ Petty Accounts” and find that the amounts to Rs. \_\_\_\_\_ as shown in the Cash Book”.

This verification should not only be made monthly, but surprise inspections should also be made at frequent intervals in order to ensure that the Nazir is not using the balance for other purposes during the middle of the month. Inspecting Officer should also check the cash balance by physical verification.

**63. Monthly comparison of Nazirs balance with Treasury Pass Book. Certificate.**

The balance should be checked by the Officer-in-charge with the “Treasury Pass Book” at the beginning of each month and he should record a certificate to the following effect in the “Cash Book”;

“I have today compared the Treasury balance as shown in the books of the agency with the balance shown in the “Treasury Pass Book” and I find that they agree”.

**Report to superior officers to be made in case of discrepancy not being reconciled:** If any discrepancy is found in the account, the Officer-in-charge of the agency should immediately take steps to have the accounts reconciled and to see that no error has crept in. If the accounts cannot be reconciled by the middle of the month following that to which the balance relates, the discrepancy must be at once reported to the District Judge who will personally take steps to have the discrepancy reconciled. If the District Judge cannot do this by the end of the month, a report must be sent to the High Court and to the Accountant-General.

**64. Difficulties in the working of accounts to be reported to higher authorities.**

Any difficulties which may be found in the working of the accounts as the result of the monthly verification should be reported to higher authorities with proposals for their removal.

## **Section XI**

### **Lapsed Items**

**65. Deposits to lapse after three years.**

Notwithstanding the provisions of Article 206, Civil Account Code, Volume I, and in partial modification thereof, all deposit items relating to Sheriffs' Petty Accounts irrespective of their amounts shall remain current for three complete account years and shall lapse to Government at the end of that period.

**Note.-** Amounts paid to process-servers for disbursement to payees shall be considered as final payments, and any undisbursed amounts refunded by them to the Nazir shall be treated as fresh deposits for the purposes of lapse.

**66. Statement of lapsed items to be prepared and sent to Treasury Officers at the end of March.**

(a) The Officer-in-charge of an agency shall prepare a statement of lapsed items on form 29, Civil Account Code, in March each year and strike them off from the "Register of Receipts" on the last day of the financial year by entering them in column 20 provided for the purpose, the date of lapse being noted below the amount. The total amount of lapsed items as per statement so prepared should agree with the total of outstanding balances prior to three complete account years as shown in the analysis of the outstanding balances

in the remarks column of the “Register of Receipts” (*vide* Rule 25 under section 1) and as worked out in the memorandum prescribed in rule 61 under section X. This statement should be submitted to the Treasury Officer on the last working day of March for adjustment under rule 59 under section IX.

**(b) Certificate by Officer-in-charge on the statement.**

The Officer-in-charge of an agency shall record on the statement a certificate to the effect that all amounts due to lapse to Government have been included in the statement.

**(c) One copy of the statement to be kept for audit.**

One copy of the statement of lapsed items should be kept with the agency for audit on the spot by the Local Audit Department/Internal Audit Cell.

**(d) Reducing of balance by Treasury Officer.**

The Treasury Officer shall reduce the balance of the Personal Ledger Account by the total amount of lapsed items and shall forward to the Accountant-General the statement in form 29, Civil Account Code, with the monthly accounts for March.

**67. Refund re: lapsed items.**

Items so lapsed if claimed should only be paid by the Treasury Officer after the necessary sanction of the Accountant-General has been obtained on form 30, Civil Account Code.

## Section XII

### Miscellaneous

68. Road and diet money (i.e. subsistence allowance and travelling expenses levied in accordance with Chapter 17 of Volume I and Chapter 12 of Volume III of the Rules and Orders) deposited in these accounts under Rule 31 of these rules in respect of servants of the Government appearing as witnesses in Civil and Criminal cases, who are not entitled to receive such expenses from the Court, will not be paid to them, but will be credited in the Treasury under the relevant Head.

In the case of employees of the Central Government, sums on account of road and diet money will be deposited into the Treasury to the credit of department concerned in the receipt Schedule of the Central Department. In the case of Railway employees, the amount is creditable to the accounts of Railway concerned under the head adjusting account with Railway in the Provincial Section of the Accounts. In each case, the following particulars will be inserted in the challan:-

1. Name of witness.
2. Official designation.
3. Office in which employed.
4. Name of Court in which he appeared.
5. Date of hearing.
6. Names of parties to the case.

**Note-** The reader of the Court concerned should give timely information to the Civil Nazir that the statement of the servant of the Government appearing as a witness has been duly recorded, so that there may be no

avoidable delay in crediting the subsistence allowance and travelling expenses into the Treasury. As a further safeguard, the reader of the Court should, before the record of a decided case is consigned to the Record Room, attach to it a certificate that the subsistence allowance and travelling expenses of all the servants of the Government, who have appeared as witnesses in the case, have been credited into the treasury under the relevant head. The Record Keeper should not receive any record to which this certificate is not attached.

69. The acceptance of commission fees by Government servants is governed by Rule 5.58 of the Civil Services Rules (Punjab), Volume I, Part I, and by Supplementary Rule 12.

**70. Forms of Receipts**

The forms of "Receipts" will be machine-numbered with a book number and a receipt number on each foil and counterfoil and bound into books each containing 200 forms.

**71. Custody and issue and checking of Receipt Books and Cheque Books.**

"Receipt" books and "Cheque" books will on receipt by the agency be entered in the "Stock Book of Receipt and Cheque Books" and remain in the personal custody of the Officer-in-charge. Issues will be made by the Officer-in-charge to the Nazir after accounting for such issue in the stock book. The number of Cheque and Receipt forms in each book should, when received, be checked and a certificate to this effect recorded on the cover of each book.

**72. Each page of register and account book to be paged and sealed and number of pages to be counted.**

Each page of every register and book of account shall be paged and sealed, and an endorsement shall be made at the end of such register or book showing the number of pages and signed by the Officer-in-charge.

**73. Custody of Registers and forms**

All Registers of Sheriffs' Petty Accounts and blank forms etc., shall be kept under lock and key.

**SHERIFFS' PETTY ACCOUNTS RULES**

Schedule A (Rule 23)

**List of items which may properly be included in Sheriffs' Petty Accounts.**

- (1) Sums deposited by parties as the expenses of witnesses, fees of expert witnesses, and commission fees, in civil, criminal and revenue cases.
- (2) Deposits of advertisement charges of newspapers in cases of substituted service and of Munadi fee.
- (3) Sums deposited for immediate disbursement as costs in partition cases (revenue).
- (4) Sums deposited as costs in connection with applications for Probate, Letters of Administration, and Succession Certificates, other than the cost of stamps deposited by applicants, under the Indian Succession Act, 1925 (Act XXXIX of 1925).
- (5) All petty items received for immediate disbursement in full.

**SHERIFFS' PETTY ACCOUNTS**

Schedule B (Rule 25)

List and specimens of registers and forms to be maintained or used in Sheriffs' Petty Accounts.

1. Register of Receipts.

2. Register of Disbursements.
3. Cash Book.
4. Treasury Pass Book.
5. Receipt Form.
6. Register of processes including warrants, etc., received from \_\_\_\_\_ Tehsil/District \_\_\_\_\_ with/without diet money or Munadi fee by the Process Serving Agent at \_\_\_\_\_.
7. Note-book of process-server.
8. Payment Order Form.
9. Challan Form.
10. Cheque Form.
11. Form No. 29, Civil Account Code, Volume I.
12. Form No. 30, Civil Account Code, Volume I.
  
13. Stock book of forms of Receipt Books/Cheque Books.
14. Intermediate register of money orders, etc.

(This register is reproduced in the Civil Court Deposit Rules. As there will be one register in each Court for all money order transactions, such transactions as relate to Sheriffs' Petty Accounts will also be included in it.)

**Form No.1**

**(Vide Rule 25)**

**Register of Receipts of Sheriffs' Petty Accounts Deposits at the Agency of the \_\_\_\_\_ for the month of \_\_\_\_\_ 20\_\_\_\_**

1	2	3	4	5	6	7	8	9
Date of receipt	Number of each deposit	No. of file of the case in which deposited	Name of the Court and of the parties with name and Tehsil number of the village in which the file is to be kept	From whom received	Nature of deposit	Amount of each deposit	Initials of Officer-in-charge	Daily total/Progressive total
						₹		

10	11	12	13	14	15	16	17	18	19	20	21
<b>DETAIL OF PAYMENTS</b>											
Date	Amount of each payment	Initials of Officer-in-charge	Date	Amount of each payment	Initials of Officer-in-charge	Date	Amount of each payment	Initials of Officer-in-charge	Total of Payments	Amount lapsed and credited to Government, with date of lapse.	REMARKS
	₹			₹			₹				

**Form No.2**

**(Vide Rule 25)**

**Register of Disbursements of Sheriffs' Petty Accounts**

**Deposits at the Agency of the \_\_\_\_\_ for the Month of \_\_\_\_\_ 20\_\_\_\_\_**

DETAILS OF ORIGINAL DEPOSIT			Date of present payment	Yearly Serial No.	To whom paid	Amount paid	INITIALS OF		Daily total carried to Cash Book/Progressive total	Payee's Receipt
Date of receipt	Number as per Register of receipts	Amount of balance of deposit					Process serving agent	Officer-in-charge		
1	2	3	4	5	6	7	8	9	10	11
		₹				₹			₹	

## Form No.3

(Vide Rule 25)

**Cash Book of Sherrifs' Petty Accounts showing Cash  
Balance in the Hand of the Nazir each day at the Agency at  
-----for the month of -----20-----**

1	2	3	4	5	6	7	8	9	10
	RECEIPTS			PAYMENTS			BALANCE		
Date	Particulars	Cash	Treasury	Particulars	Cash	Treasury	Cash (3-6)	Treasury (4-7)	Initials of the Officer-in-charge
1.4.2014	Opening balance (I) Daily total as per register of receipts Total	₹ 200 200	₹ 4,000 4,000	(I) Daily total as per register of disbursements	₹ 150 150	₹	₹ 50	₹ 4,000	
2.4.2014	(I) Daily total as per register of receipts (2) from cash total	500 700	250 4,250	(2) Daily total as per register of disbursements (2) paid into treasury	100 250 500		200	4,250	
3.4.2014	(I) Daily total as per register of receipts (2) withdrawn from treasury total	280 150 1,130	..... 4,250	(1)Daily total as per register of disbursements (2) For cash	530 1,030	150 150	100	4,100	



**Form No.5****(Vide Rule 35)**

Receipt for deposit in Sheriffs' Petty Accounts in  
 Agency at \_\_\_\_\_ Counterfoil of Receipt  
 Book No. \_\_\_\_\_  
 Receipt No. \_\_\_\_\_

Receipt for money deposited in Sheriffs' Petty Accounts in Agency at  
 \_\_\_\_\_  
 Book No. \_\_\_\_\_  
 Receipt No. \_\_\_\_\_

Date		Date	
No. of entry in Register of Receipts		No. of entry in register of Receipts	
Name of Agency		Name of Agency	
Name of depositor		Name of depositor	
Amount deposited		Amount deposited	
Signature of Officer-in-charge		Signature of Officer-in-charge	

**Form No.6**

<b>Form No.6</b> <b>(Vide Rule Nos.37 and 40)</b> Register of processes including warrants, etc., received from _____ Tehsil/District _____ with/without diet money or Munadi-fee by the Process-serving Agent at _____	Remark	<b>21</b>
	Date of submission of process to the issuing Court with abstract of final orders	<b>20</b>
	Date of return of undisbursed diet money.	<b>19</b>
	Amount of diet-money received back in case of unserved process with No. of entry in the Register of Receipts (Form No.1) in which return money Accounted for	<b>18</b>
	Whether served or unserved	<b>17</b>
	Date of return from Process-Server or other District or Tehsil	<b>16</b>
	Reference to corresponding Serial No. and date of Register of disbursements (Form No.2 Sheriffs' Petty Account Rules)	<b>15</b>
	Date on which made over to Process-Server for service or on which sent to other District and Tehsil	<b>14</b>
	No. and name of Process-server or Bailiff by whom to be served or Tehsil or District to which sent for service together with abstract of immediate order	<b>13</b>
	Date fixed by the issuing Court for return of the process	<b>12</b>
	Name of person on whom process is to be served	<b>11</b>
	Purpose for which received	<b>10</b>
	Reference to correspondence Serial No. and date of Register of receipts (Form No.1 Sheriffs' Petty Accounts Rules)	<b>9</b>
	Amount with detail of diet-money or Munadi-fee received with the process	<b>8</b>
	Amount of Process-fee (Talbanda)levied	<b>7</b>
	Description of Process	<b>6</b>
	Name of Parties	<b>5</b>
	Case No.	<b>4</b>
	Name of the Court, Tehsil and District from which received	<b>3</b>
	Date of receipt of process	<b>2</b>
	Serial No.	<b>1</b>



**Form No.8**

**(Vide Rule 48)**

**Payment Order on Sheriffs' Petty Accounts at \_\_\_\_\_**

**Serial No. of Register of Disbursements**

Original Number		Date of deposit		Name of depositor		Amount Originally deposited	
Pay ₹ Dated _____ Presiding Officer						Received this _____ day of _____ 20 _____ the sum of ₹ _____ being the amount payable to _____ on account of the undisbursed deposit described above. Claimant's _____ name and signature _____	

**Form No.9**  
**(Vide Rule 53)**  
**Challan**  
**STEREO A AND T.T.M. No.192**

Challan of cash paid into \_\_\_\_\_ Treasury

On \_\_\_\_\_ 20 \_\_\_\_.

Name of person paying the money	Amount paid (in words and figures)
On account of	
Name of person actually tendering the cash	

Head of account

Date

Received from

Rupees

To the credit of Government as stated herein

Treasurer

Accountant

Treasury Officer.

**Form No. 10**

**(Vide Rule 54)**

**Cheque**

(Books of personal ledger account cheques as supplied by Treasury Officer)

**Form No.11****(Vide Rule 66)****Form No.29 C.A.C. VOL.I.****Stereo A and T.C.A.C. No.5****Statement of Lapsed (Civil Criminal Courts or Revenue) Deposits of the \_\_\_\_\_****Treasury For the Year \_\_\_\_\_ 20 \_\_\_\_\_**

PARTICULARS OF DEPOSITS			FOR USE IN ACCOUNTANT-GENERAL'S OFFICE				
Year	No.	Balance lapsed	Refund order		Amount of refund sanctioned	Initials	REMARKS
			No.	Dated			
Margin for filing		₹			₹		
Total carried over							

\_\_\_\_\_ Court

At \_\_\_\_\_

Dated \_\_\_\_\_

Officer-in-charge

Treasury Officer

**Form No.12**  
**(Vide Rule 67)**  
**Stereo A and T. No.6 Form No.30 C.A.C.**  
**Volume I**  
**Voucher No.**  
**REFUND OF LAPSED DEPOSITS**

To

THE ACCOUNTANT-GENERAL \_\_\_\_\_

SIR,

THE following refund of Lapsed Deposits, aggregating ₹ (in words) \_\_\_\_\_ have been claimed by \_\_\_\_\_ of whose identity and title to the money I have satisfied myself. I request your sanction to the refund.

Class of Deposit	PARTICULARS OF ORIGINAL DEPOSIT		Balance credited to Government	Date of Lapsed Statement	Amount claimed	Remarks
	Year	No.				
			₹			

(Sd.)

\_\_\_\_\_ District

Judge, Magistrate or other Officer.

The \_\_\_\_\_ 20\_\_\_\_\_ .

Designation of other Officer, \_\_\_\_\_

Accountant-General's Office No. \_\_\_\_\_, dated \_\_\_\_\_

Sanctioned \_\_\_\_\_

Assistant Accounts Officer/Assistant Accountant-General, Punjab/Haryana/U.T. Chandigarh.

Received Payment

Claimant

Pay Rupees(\_\_\_\_\_ only)

The \_\_\_\_\_ 20 \_\_\_\_\_.

Examiner

Accountant

Treasury Officer

Notice: The signature of the claimant should be obtained on this form and the form should be returned as a voucher in support of the debit.

For use in Accountant General's Office

Serial No. \_\_\_\_\_ in No. Book

ADMITTED \_\_\_\_\_

Noted in the Number

OBJECTED TO \_\_\_\_\_

Book of the Orders.

Auditor. Exmr. Supdt.

Superintendent.



**Part-E**  
**Civil Court Deposit Accounts**

**74. Amounts included.**

Civil Court deposits consist of sums which are paid into the Treasury under the orders of the Court with the intention that they should be paid out again either to the depositor or to a third person and should not be finally credited to Government until they lapse to Government under Article 206, Civil Account Code, Volume I. Civil Court Deposit Accounts relate to all deposits other than those which may properly be included in Sheriffs' Petty Accounts. The large majority of such items are decretal amounts; a list of other items which may be included in these accounts is given in Schedule A to these rules.

**75. Voucher system.**

Earlier two systems i.e. cash system and voucher system were being followed in Courts for Civil Court deposits. Cash System was being followed in Courts situated at stations where there was no Treasury or Sub-treasury, besides the Court of Small Causes at Amritsar. However, now Treasury or sub-treasury is available at all stations wherever the Courts are located. Consequently, the Cash System for Civil Court deposits is being done away with and only Voucher System shall be followed in all the Judicial Courts for Civil Court deposits.

**76. Bailiffs' note-books and their checking**

In order to watch the return and execution of warrants, etc., entrusted to the Bailiffs and to see on what dates the amounts were realized by them and paid into the Treasury, each Bailiff shall maintain a note-book in the form prescribed in Schedule B to these rules.

**Note** - The note-books of bailiffs will be checked as laid down in note 1 to Rule 43 with the modification that such checks will be performed monthly by the Superintendent or the Clerk of Court, as the case may be and quarterly by the Presiding Officers in the case of accounts maintained in Courts of District Judge and Civil Judge (Senior Division) and in a Small Cause Court; and monthly by the Officers-in-charge of the Agencies at outlying stations.

**77. Particulars of the warrant to be entered in Bailiff's note-book.**

Before a warrant is handed over to the Bailiff for execution, its particulars should be entered in columns 1 to 9 of his note-book by the Nazir. The remaining columns should be completed by the Bailiff or the Nazir, as the case may be, after the execution of the warrant.

**Note** - Rules 76 and 77 also apply to Process Servers who are entrusted with the execution of warrants.

**78. Stamps on receipts**

Requisite revenue receipt stamp where required shall be affixed on the payment voucher (where the amount exceeds the prescribed limit).

**Note:-** In cases in which joint interests are involved, a deposit repayment voucher for a sum exceeding the prescribed limit should be held to be sufficiently stamped if a single revenue receipt stamp of requisite

amount is affixed to it even though it may be receipted by more than one person.

**79. Initial deposit by applicant in insolvency cases**

Under rule 55 of Chapter 5-C, High Court Rules and Orders, Volume II, the initial deposit made by an applicant for adjudication as insolvent is to be shown as a deposit under these rules. Insolvency Courts exercising powers of summary administration may also act as receivers of the Insolvents' estate.

Separate registers with regard to such sums may be maintained provided the Nazir or Cashier remains responsible for the accounts and combines these with the rest of the Civil Court Deposit Accounts at the end of the month.

**80. Separate accounts for each Court.**

There will be a separate set of accounts for each Court, and the Presiding Officer of each Court will be personally responsible for the supervision of the accounts of his own Court (in the absence of special permission from the High Court to delegate his duties). When an Additional Judge is appointed to a Small Cause Court, a separate account will be opened, and there will also be a separate account for the Court of Registrar.

**81. "Nazir" defined**

The term "Nazir" in these rules includes a Cashier and a *Naib-Nazir*.

**82. Money orders**

Money orders addressed to the Courts must be signed by the Presiding Officer and by no one else except another judicial officer appointed to discharge the duties of the Presiding Officer during temporary absence. It is absolutely forbidden for Superintendents, Clerks of Court or other ministerial officers to sign them. The Presiding Officer, at the time of receiving any money orders, shall first see that the Nazir has entered sufficient particulars thereof to identify the transactions in the "Court's Intermediate Register" and he will then both initial the "Intermediate Register" in respect of the transaction and sign the money order receipt before handing over the receipt to the postman and the money with the money order coupon to the Nazir for further disposal. The money order coupon shall be treated as the depositor's application and the procedure with regard to such applications shall be followed with regard to it. The Presiding Officer must see that all items in the "Intermediate Register" are cleared by transfer entries to the appropriate "Register of Receipts" on the day of receipt if possible or the next morning and initial both the "Intermediate Register" and the "Register of Receipts" in verification of this having been done by the Nazir.

### **83. Principle of the voucher system**

The principle of this system is that laid down in Article 209, Civil Account Code, Volume I; that is, it is intended that the Courts should neither receive nor pay out money, but that all deposits should be paid into the treasury on documents signed by the Presiding Officer of the Court, and all payments should be made by means of vouchers on the Treasury.

### **84. Exceptions**

Certain exceptions, however, have to be made in the case of money received by the Court by money order or collected. Special provision for such cases is made in these rules, the principle being that the money must be paid into the Treasury by the Court on the same day. The Presiding Officer is responsible for seeing that this is done.

**85. Register of Receipts.**

Only one register i.e. the “Register of Receipts”, which is slightly different from the one maintained for Sheriffs’ Petty Accounts, will be maintained under the Voucher System. Specimen of this register is reproduced in Schedule B to these rules. The important point to bear in mind is that this register is primarily a record of challans and vouchers issued and not of actual cash transactions.

**86. Application for deposit: How to be dealt with.**

When a deposit is tendered by a depositor in person, he will present an application to the Court. This application will be verified from the judicial record of the case concerned by the Ahlmad and if it is in order, he shall pass it on to the Nazir. The Nazir shall then fill in columns 1 to 7 of the “Register of Receipts” and prepare a “challan” in duplicate. The Nazir shall then produce the depositor and these documents before the Presiding Officer who, if he approves the deposit, shall sign the order of deposit on the application and also sign the challan in duplicate after initialing the amount in column 7 of the “Register of Receipts” and then hand over to the depositor his application and the challan in duplicate and warn him that he must make the deposit and present the three documents at the Treasury

himself and must not do so through any court official. If the Presiding Officer does not approve the deposit, he shall cancel, over his own signature, the entries which have been made by the Nazir in all these documents including the register.

**87. Return of application by the Treasury.**

On receipt of the money by the Treasury, one copy of the challan will be returned to the depositor duly signed by way of receipt and the other copy will be retained by the Treasury. The application will be returned by the Treasury to the Court concerned direct after the number and date of the entry in the Treasury Receipt Register (Form No.43, C.A.C., Volume II) have been noted thereon.

**88. Remittance to Treasury of money received by money orders.**

(i) When money is received by money order and dealt within the "Court's Intermediate Register" as provided in Rule 82, the Nazir will prepare a formal application and the necessary challan in duplicate, fill in columns 1 to 7 of the "Register of Receipts", and remit the money to the Treasury after the Presiding Officer signs the application and the challan in duplicate, and initials the amount in column 7 of the "Register of Receipts".

(ii) All money received under this Rule must be paid into the Treasury on the same working day, or on the morning of the next working day if received after the closing hours of the Treasury.

**89. Deposit by Bailiffs or Court Auctioneers.**

When money is to be paid in by a Bailiff or a Court Auctioneer, he should be required to pay the money into the Treasury himself as if he were

a private depositor. The copy of the challan returned by the Treasury to the Bailiff by way of receipt should be pasted into his note-book.

**Note.-** When money is realized by a Bailiff on a warrant issued by a Court not situated at the headquarters of the Process Serving Agency to which he is attached, the challan will be prepared in triplicate by the Local Process Serving Agent and signed by the Officer-in-charge of the Agency. On receipt of the money, the treasury will retain one copy of the challan, return the second copy to the Bailiff and forward the third, after noting thereon number and date of the deposit in the books of the treasury, to the local Process Serving Agent for transmission to the Court concerned so that the deposit may be entered in the Register of Receipts maintained in that Court.

90. **The names of both the actual depositor and the person on whose behalf the deposit is made should be entered.**

Where money is received either by money order or through a Bailiff or Court Auctioneer, the words “By money order” or “Through Bailiff” or “Through Court Auctioneer”, as the case may be, should be entered in column 5 of the “Register or Receipts” besides the name of the person from whom the money is received. The Presiding Officer will then be responsible for checking the Treasury receipt numbers and dates of these items with the challans received back from the Treasury, which should be laid before him on the following day. He should initial column 9 of the “Register of Receipts” in token of this check.

91. **Treasury Receipt Number and date to be entered in Receipt Register.**

When the application is received back from the Treasury, the Nazir will enter the treasury receipt number and date in column 8 of the “Register

of Receipts” and the Presiding Officer will initial column 9 after verification. The application will then be placed on the judicial record of the case by the Ahlmad concerned.

**92. Deposits in re: prohibitory (attachment) orders issued against salaries of Government servants.**

Deposits in Courts in respect of prohibitory (attachment) orders issued by them against the salaries of Government servants etc., will be made as follows:

- (i) Where a Government servant is paid by an office which is situated in a station other than that in which the Court issuing the prohibitory order is located, the salary disbursing office must remit the amount to the Court by postal money order, cheque, bank demand draft or remittance transfer receipt (the fee/commission, if any, for the same being deducted from the amount specified in the attachment order), or in cash through messenger, who may deposit the same in Treasury or sub-treasury as per sub-clause (ii);
- (ii) Where a Government servant is paid by an office which is situated in the same station at which the Court issuing the prohibitory order is located, the salary disbursing office must deposit the amount in the local treasury or sub-treasury as a “Revenue Deposit” on a challan prepared by the salary disbursing office in triplicate; one copy of the challan will be retained by the treasury or sub-treasury for record, one copy will be returned by the Treasury Officer to the salary disbursing office as a receipt, and the third copy will be forwarded by the Treasury Officer to the Court issuing the prohibitory order with the number and date of the treasury deposit noted on it to enable the Court to make the necessary entries in its “Register of

Receipts” and place the challan receipted by the treasury or sub-treasury on the judicial record of the case.

Presiding Officers of Courts shall endorse all prohibitory orders with clear instructions, that is (i) or (ii) above as the case may be, to guide the salary disbursing offices how to pay into Courts the money attached.

**93. Mode of payments.**

No separate register for recording repayment of Civil Court deposits will be maintained by the Nazir of the Court. On receipt of an application for the repayment of such deposit, the Nazir of the Court will verify the item from the “Register of Receipts” and put up the application along with the register and the original record, if not already consigned to the record room, for order of the Presiding Officer. After orders for repayment are passed by the latter, the Nazir will prepare a voucher in form “C.A.C. Form No.27”, enter the particulars of repayment in the “Register of Receipts” against the relevant item and will get both the register and the voucher signed by the Presiding Officer of the Court concerned. He will then deliver the voucher along with a memo, showing brief particulars of payment to the payee for drawing money from the Treasury and place the application and the payee’s receipt for the voucher on record. The Treasury Officer will return the memo to the Court after recording thereon the number and date of the Treasury voucher and these particulars should be noted against the entry of payment in the “Register of Receipts” over the signature of the Presiding Officer of the Court.

**94. Duplicate voucher.**

If a second claim is presented for the amount shown in the “Register of Receipts” as paid in, duplicate voucher may, if necessary, be issued to the payee after obtaining a non-payment certificate from the Treasury Officer, - vide Article 16, Civil Account Code, Volume I. This voucher should be distinctly marked “Duplicate”. A note regarding the issue of the duplicate voucher should be recorded in red ink against the item in question in the “Register of Receipts” over the initials of the Presiding Officer.

**95. Voucher forms should be supplied in book form, stitched and machine numbered.**

Vouchers in form C.A.C. Form No.27 are often supplied in unbound form. The Courts should not accept vouchers in form C.A.C. Form No.27 except in book form stitched and machine-numbered.

**96. Repayment by transfer credit to Government Account.**

In the case of repayment to be made by transfer credit to Government account, the voucher will be prepared by the Nazir in the same way as laid down in Rule 93, duly signed by the Presiding Officer of the Court who should note distinctly on the voucher:

“Received payment by transfer credit to \_\_\_\_\_”(specifying the appropriate head of account). On receipt of the voucher, the Treasury Officer will make the necessary entries in his account by “debit to deposit” and credit to the head specified in the voucher entering the amount in the relevant receipt schedule. Such vouchers need not be stamped with revenue receipt stamp even though the amount involved exceeds the prescribed limit which is presently ₹5000/-.

**97. Returns to be prepared by Treasury Officer.**

All returns in connection with the receipt and repayment of deposits for submission to the Accounts Office will be prepared by the Treasury Officer and not by the Nazir of the Civil Court concerned.

**98. Custody of Registers and forms**

All registers of Civil Court deposits and blank forms of the vouchers for repayment of deposits (form S.T.R. 41) shall be kept under lock and key.

**Civil Court Deposit Accounts**

**SCHEDULE-A**

**(Rule-74)**

List of items which may properly be included in Civil Court Deposit Accounts.

1. Money paid into Court by parties in anticipation of judgment.
2. Pre-emption money.
3. Decretal amounts paid in by judgment-debtors or by their superior officers, when their pay is attached, or by other Courts, on attachment of a decree.
4. Amounts realized in execution by Bailiffs or Court Auctioneers.
5. (Insolvency Court only): Advertisement charges and realizations from estates summarily administered.
6. (District Courts only): Compensation for land acquisition deposited by Collector.
7. Deposits for Court-fee in Probate, Letters of Administration and Succession Certificate cases.
8. Deposits under the Punjab Relief of Indebtedness Act.
9. Security required by a Civil Court and deposited by a party to a suit.
10. Any other amount received by a Civil Court in a case and cannot be disbursed immediately, provided that in no case will money be deposited in

these accounts which under other rules is straightaway to be credited to Government revenues.

**Note:** No Court should receive money unless it is authorized to do so either by law or by the rules of the High Court and in the absence of express authority, and of full particulars, the deposit should be refused, otherwise, difficulties may arise over refunds. All money received must be brought to account. In particular, it should be noted that:

- (i) the taking of security in cash from subordinate officials is forbidden; and
- (ii) Guardianship Courts are not allowed to take money into deposit on behalf of minors. Guardians frequently try to deposit money with the Court. They should be required to deposit it with an approved Bank in accordance with the rules on the subject. Other persons should be directed to make payment to the guardians.

### **Civil Court Deposit Accounts**

#### **Schedule-B**

List and specimens of registers and forms to be maintained or used by Courts in Civil Court Deposit Accounts.

1. Note-Book of Bailiff.
2. Register of Receipts.
3. Voucher in form No.27.
4. Challan form
5. Form No.30, Civil Account Code, Volume I
6. Intermediate Register.



**Form No.2**

(Vide Rule 85)

**Register of Receipts of Civil Court Deposits of the Court of \_\_\_\_\_****(Voucher System)**

1		Date of receipt	
2		No. of each deposit	
3		No. of file of the case in which deposited	
4		Name of the Court and of the parties with name and Tehsil No. of the village in which the file is to be kept	
5		From whom received	
6		Nature of deposit	
7		Amount of each deposit	₹
8		No. and date of deposit in the Treasury	
9		Initials of presiding officer	
10		Daily total	₹
11	Details of Repayments	No. and date of the Treasury Voucher	
12		Amount of each repayment	
13.		Initials of presiding officer	
14.		Date	
15.		Amount of each repayment	
16.		Initials of presiding officer	
17.		Total of repayments. Date	
18.		Lapsed and credited to Government. Amount of each repayment	
19.		Initials of Presiding officer	
20.		Total of repayments	
21.		Lapsed and credited to Government	
22		REMARKS	

**Form No.3**

(Vide Rule 93)

**Voucher In Form No.27 Civil Account Code, Volume-I**

Stereo A. and T./Deposits No.261

\_\_\_\_\_ Treasury Month of \_\_\_\_\_ 20\_\_\_\_\_

Voucher No. \_\_\_\_\_

Head of Service Chargeable \_\_\_\_\_ Deposits \_\_\_\_\_ List of payments \_\_\_\_\_

Original Number -	Date of Deposit _____	Name of Depositor .....	Amount originally deposited Rupees.....
		Received this _____ day of _____ 20 _____, the sum of Rupees _____ being the amount payable to _____	
		on account of the Deposit described above.	
Rupees	<u>Examined and entered</u> Accountant, Treasury.	Claimant's Signature	Stamp, if required
	Treasury Officer	Passed for payment ₹	Judge/Magistrate

**Form No.4**  
**(Vide Rule 86)**

**Challan**

**Stereo A. and T.T. M. No.192**

**Challan of cash paid into \_\_\_\_\_ Treasury on \_\_\_\_\_ 20**

Name of person paying the money	Amount paid (in words and figures)
On account of	
Name of person actually tendering the cash	

Head of Account.

Date

Received from

Rupees

to the credit of Government as stated therein

Treasurer

Accountant

Treasury Officer.

**Form No.5****Form No.30, Civil Account Code, Volume I**

(Form No. 12 of Sheriffs' Petty Accounts in Part D of this Chapter)

**Form No.6  
(Vide Rule 82)**

**Intermediate Register of Money Orders, etc., Received in the  
Court of \_\_\_\_\_ for the month of \_\_\_\_\_ 20\_\_\_\_\_**

	<b>RECEIPT</b>						<b>DISPOSAL</b>			
Serial No.	Date of receipt	If Money Order (i) Name of remitter. (ii) No. and date of money order, and (iii) Post Office of issue	If cheque- (i) Name of drawer. (ii) No. and date of cheque (iii) what bank, and (iv) No. and date of covering letter	If other valuables – (i) Specify them (ii) From whom received (iii) Particulars of case.	Amount of money order or cheque	Initials	Serial No. and date in Register of Receipts S.P.A./C.C.D.	Mode of other disposal	Signature of Presiding Officer	REMARKS

## Chapter 10

### Punjab and Haryana Gram Nyayalayas Rules, 2014

(**Note:** Rule 3 relating to seal of Gram Nyayalaya requires approval of the State Governments in view of Section 10 of the Gram Nyayalayas Act, 2008 and Rule 8 relating to Court Fee on application or complaint requires consultation with the State Governments in view of Section 24(1) of the Act *ibid*)

In exercise of the powers conferred by Section 39 of the Gram Nyayalayas Act, 2008(No. 4 of 2009), the Punjab and Haryana High Court, Chandigarh, with approval and consultation of the State Governments of Punjab and Haryana, hereby makes the following Rules:-

#### 1. **Short title, extent and commencement:**

(1) These rules may be called the **Punjab and Haryana Gram Nyayalayas Rules, 2015**.

(2) These Rules shall apply to Gram Nyayalayas in the States of Punjab and Haryana.

(3) These Rules shall come into force on the date of their publication in the Official Gazette.

#### 2. **Definition.** In these rules, unless the context otherwise requires, ---

(a) “**Act**” means the Gram Nyayalayas Act, 2008 (4 of 2009).

(b) “**Rules**” means the rules made under the Act.

(c) “**Nyayadhikari**” means the Presiding Officer of a Gram Nyayalaya.

(d) Words and expressions used in these rules and not defined herein but defined in the Act shall have the respective meanings assigned to them in the Act.

**3. Seal of Gram Nyayalayas:** Every Gram Nyayalaya shall have a seal with the dimension as that of seal of the Judicial Magistrate First Class with State Emblem with inscription in the outer margin of the seal as “Seal of Nyayadhikari, Gram Nyayalaya\_\_\_\_\_ (Name of Nyayalaya to be filled in)”.

**4. Nyayadhikari:** (a) Nyayadhikari of Gram Nyayalaya shall be appointed from amongst the members of the State Judicial Service.

(b) The Nyayadhikari of Gram Nyayalaya shall be entitled to residential accommodation as per his entitlement in service at nearest district or sub-divisional headquarter.

(c) He shall be provided with vehicle with fuel to be used for official purposes including commuting from residence to work place.

**5. Court hours and decorum:**

(i) Gram Nyayalaya shall observe Court working hours as observed by the Judicial Courts.

(ii) Provisions of Rule 26 of ‘Canons of Judicial Ethics’ in Chapter 1 of Rules and Orders of Punjab and Haryana High Court, Volume-4 shall be applicable to Nyayadhikari, Advocates and Lawyers.

**6. Procedure for Institution of Application or Complaint:** Any application in prescribed proforma as per forms provided in Appendix ‘A’ of first schedule of the Code of Civil Procedure or complaint may be filed in the Gram Nyayalaya on every working day during court hours. Application or complaint shall be scrutinized and if found proper, the same shall be registered and be assigned a unique number.

**7. Nomenclatures to be given to the Applications/Complaints:** The nomenclatures as mentioned in **Appendix ‘A’** to the Rules shall be

employed for different types of Applications/Complaints filed in the Gram Nyayalaya.

**8. Court Fee:** Court fee as per the provisions of the Court-fees Act, 1870, subject to maximum Court-fee of ₹100/-, shall be affixed on every application or complaint. In respect of all other matters, court fee as per the provisions of the Court-fees Act, 1870 shall be payable.

**9. Issue of summons in Application:** (a) When an Application has duly been filed, a summons on prescribed proforma as provided in the Code of Civil Procedure shall be issued to the opposite party to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that opposite party:

Provided that where the opposite party fails to file the written statement within the said period of thirty days, he may be allowed to file the same on such other day as may be specified by the Gram Nyayalaya, for reasons to be recorded in writing, but which shall not be later than 60 days from the date of service of summons.

(b) The summons shall be signed and sealed with the seal of Gram Nyayalaya in the manner prescribed for summons in a civil suit.

(c) The applicant shall deposit one time process fee of ₹ 25/- in each case along with copies of application equal to the number of defendants/respondents.

(d) Every summons shall be accompanied by a copy of the Application.

(e) Summons shall be served through process serving Agency of such Court as may be determined by the District Judge of the District within whose jurisdiction the Gram Nyayalaya is situated and/or through registered post and/or through courier service providers approved by the High Court, and will be returned served or unserved along with affidavit of the person

effecting the service. Summons may also be served by e.mail/short messaging service/fax where e.mail address/mobile telephone number/fax telephone number of the defendant/respondent is available.

**10. Issue of Summons in Complaint Matters:**

(i) Summons to the accused on proforma as provided in second schedule of the Code of Criminal Procedure shall be in writing, in duplicate, signed by the Nyayadhikari of such Gram Nyayalaya and shall bear the seal of the Gram Nyayalaya.

(ii) The Complainant(s) shall deposit one time process fee of ₹ 25/- in each case alongwith copies of Complaint and list of witnesses equal to the number of accused to be served.

**11. Certified Copies:**

(a) A copy of the final order shall be supplied to the parties free of cost.

(b) An extra certified copy shall be issued on a payment of fee of ₹ 20/-.

(c) A certified copy of an order shall clearly specify the date of order, date of application, if any, date when the copy was prepared and date of issuance thereof.

(d) A certified copy of any document on the file of the Gram Nyayalaya, shall be issued on payment of fee of twenty rupees per copy:

Provided that if any such document exceeds 5 pages, an extra amount of two rupees per page shall be payable.

(e) Certified copy of any miscellaneous order passed by the Gram Nyayalaya shall be supplied on payment of fee of ₹ 10/- per copy upto 5 pages and extra amount of two rupees per page for order exceeding 5 pages.

(f) All other matters with regard to supplying certified copies shall be dealt with in accordance with Rules contained in Chapter 16 of Rules and Orders of Punjab and Haryana High Court, Volume-4.

## **12. Conciliation:**

**(i) Appointment of Conciliator.** The Gram Nyayalayas shall, in the first instance, appoint a Conciliator out of panel to assist, persuade and conciliate the disputing parties in arriving at a settlement in respect of the subject matter of the application/complaint:

Provided that the Nyayadhikari may appoint a person a conciliator who is not on the panel of Conciliators where both the parties to dispute propose the name of such person in writing.

(ii) The Conciliators will follow the procedure as prescribed in the Mediation and Conciliation Rules framed by the Punjab and Haryana High Court.

### **(iii) Panel of Conciliators:**

(1) Every Gram Nyayalaya shall have panel of 10 Conciliators prepared by the District Judge in consultation with the District Magistrate.

(2) Such panel shall be reviewed periodically. The maximum tenure of a Conciliator will be two years, extendable by another term of two years.

(3) Panel shall consist of at least one woman, one member of Panchayat and one person belonging to Scheduled Caste/Backward Class.

**(iv) Qualifications of Persons to be empanelled as Conciliators:** The persons having following qualifications shall be eligible to be empanelled as Conciliators:-

(a) The person should be of minimum 35 years of age;

(b) The person should be a graduate or retired teacher from a Government recognized educational institution or sitting or former Sarpanch/Member Panchayat/Lambardar.

(c) He should be preferably from the local area of the Gram Nyayalaya.

(v) **Disqualification to be empanelled as Conciliator:**

Any person who has been adjudged insolvent; or

against whom criminal charges involving moral turpitude have been framed by a court or convicted of such offence; or

against whom disciplinary proceedings have been initiated by the competent authorities or who has been punished in such proceedings;

or

is having any pending litigation in Gram Nyayalaya or any other Court of his own or any of his family member such as mother, father, brother, sister, son, daughter, wife etc. or

such other categories of persons as may be notified by the District Judge,

shall not be empanelled as Conciliator.

**13. Inspection of Gram Nyayalaya:**

(i) Every Gram Nyayalaya shall be inspected at least twice a year by the District & Sessions Judge. He shall issue such instructions as he may deem necessary for proper functioning of Gram Nyayalaya and shall submit a report to the High Court.

(ii) Every Gram Nyayalaya in a Sessions Division shall be subject to inspection by the Administrative Judge of the High Court for the said Sessions Division.

**14. Publication:** These Rules shall be published in the Government Gazette of the States of Punjab and Haryana.

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**Appendix 'A'**

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<b>Sr. No.</b>	<b>Nature of Proceedings</b>	<b>Abbreviated Form</b>
<b>1.</b>	<b>Offences under the Indian Penal Code (45 of 1860) ETC.</b>	
(i)	Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;	Challan (IPC) Comp (IPC)
(ii)	theft, under section 379, Section 380 or Section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed rupees twenty thousand;	
(iii)	receiving or retaining stolen property under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed rupees twenty thousand;	
(iv)	assisting in the concealment of disposal of stolen property under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed rupees twenty thousand;	
(v)	offences under Sections 454 and 456 of the Indian Penal Code (45 of 1860);	
(vi)	insult with intent to provoke a breach of the peace under section 504, and criminal intimidation, punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal code (45 of 1860);	
(vii)	abetment of any of the foregoing offences;	
(viii)	an attempt to commit any of the following offences, when such attempt is an offence.	
<b>2.</b>	<b>Offences and relief under the other Central Acts</b>	
(i)	any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);	(i) Comp. (CTA)
(ii)	the Payment of Wages Act, 1936 (4 of 1936);	(ii)Comp. (PWA)
(iii)	the Minimum Wages Act, 1948 (11 of 1948);	(iii)Comp.(MWA)
(iv)	the Protection of Civil Rights Act, 1955(22 of 1955)	(iv)Comp. (PCR)

- |   |                           |
|---|---------------------------|
| (v) order for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973(2 of 1974); | (v) Comp. Misc. (Cr.P.C.) |
| (vi) the Bonded Labour System (Abolition) Act, 1976 (19 of 1976);   | (vi)Comp.(BLA)            |
| (vii) the Equal Remuneration Act, 1976 (25 of 1976);  | (vii)Comp. (ERA)          |
| (viii) the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)  | (viii)Comp.(DVA)          |

### 3. Suits of a Civil Nature within the jurisdiction of Gram Nayalayas

#### (i) Civil Disputes

- |   |               |
|---|---------------|
| (a) right to purchase of property;                                | (a) CD (RPP)  |
| (b) use of common pasture;  | (b) CD (UCP)  |
| (c) regulation and timing of taking water from irrigation channel | (c ) CD (WIC) |

#### (ii) Property Dispute

- |  |                    |
|--|--------------------|
| (a) village and farm houses(Possession);         | (a) PD(Possession) |
| (b) water channels;                              | (b) PD (WC)        |
| (c) right to draw water from a well or tube well | ( c) PD (RDW)      |

#### (iii) Other Disputes

- |  |                            |
|--|----------------------------|
| (a) claims under the Payment of Wages Act, 1936(4 of 1936);                    | (a) Civil PWA              |
| (b) claims under the Minimum Wages Act, 1948 (11 of 1948);                     | (b) Civil MWA              |
| (c ) money suits either arising from trade transaction or money lending;       | (c ) Money suit            |
| (d)disputes arising out of the partnership in cultivation of land;             | (d) Cultivation dispute    |
| (e)disputes as to the use of forest produce by inhabitants of Gram Panchayats. | (e) Forest Produce Dispute |