

HIGH COURT OF JHARKHAND

RULES, 2001

In exercise of the powers conferred by Section 29 of The Bihar Reorganisation Act, 2000 (Act XXX of 2000), and all other powers enabling it in this behalf, the High Court of Jharkhand hereby makes the following rules, namely :

PART I GENERAL

CHAPTER I INTERPRETATION, ETC.

1. (1) These rules may be called as High Court of Jharkhand Rules, 2001.
- (2) These shall come into force on such date**Came into force w.e.f. 6th June, 2001 vide High Court Notification, dated 10.5.2001, as the Chief Justice may, by Notification in the official Gazette, appoint :
Provided, however, different dates may be appointed for enforcement of different rules.
2. (1) In these rules, unless the context otherwise requires—
 - (a) 'advocate' means a person whose name is entered on the roll of Advocates prepared and maintained by a State Bar Council under the Advocates Act, 1961 (25 of 1961); and includes Senior Advocate and Advocate on record.
 - (b) 'advocate on record' means an advocate who is entitled under these rules to act as well as plead for a party in the Court;
 - (c) 'appointed day' means the date on which these rules shall come into force;
 - (d) 'Chief Justice' means the Chief Justice of HIGH COURT OF JHARKHAND and includes a Judge appointed under Article 223 of the Constitution to perform the duties of the Chief Justice;
 - (e) 'Code' means the Code of Civil Procedure, 1908 (5 of 1908);
 - (f) 'Constitution' means the Constitution of India;
 - (g) 'Court' and 'this Court' means the HIGH COURT OF JHARKHAND;
 - (h) 'Court appealed from' includes a Tribunal or any other judicial body from which an appeal is preferred to this Court;
 - (i) 'Judge' means a Judge of the High Court of Jharkhand;
 - (j) 'Judgment' includes decree, order, sentence or determination by any Court, Tribunal, or any other Authority having jurisdiction to decide a matter;
 - (k) 'Judicial Officer' means an Officer belonging to the Judicial Service of either type;
 - (l) 'prescribed' means prescribed by or under these Rules;
 - (m) 'Registrar' includes the Registrar General and vice- versa;
 - (n) 'Registry' means the Registry of the High Court of Jharkhand;
 - (o) 'respondent' includes an intervenor;
 - (p) 'the Rules' and 'Rules of Court' mean these Rules and include the forms appended to these Rules;
 - (q) 'Senior advocate' means an advocate so designated under sub-section (2) of Section 16 of the

Advocates Act, 1961 (25 of 1961);

(r) 'State' means the State of Jharkhand;

(2) Terms words or expressions not defined herein shall have the meaning assigned to them in Acts or Rules from which they draw their origin.

3. The General Clauses Act, 1897 (10 of 1897), shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Legislature.

4. Where by these rules or by any order of the Court any step is required to be taken in connection with any cause, appeal, or a matter before the Court, that step shall, unless the context otherwise requires, be taken in the Registry.

5. Where any particular number of days is prescribed by these Rules, or is fixed by an order of the Court, in computing the same, the day from which the said period is to be reckoned shall be excluded and, if the last day expires on a day when the Court is closed, that day and any succeeding day on which Court remains closed shall also be excluded.

CHAPTER II

RULES FOR THE DISPOSAL OF NON-JUDICIAL BUSINESS

****Rules 6, 7 and 8 came into force w.e.f. 20.2.2003, vide Notifi. No. 02 Acctts, dated 19.2.2003. 6.**

There may be a Standing Committee comprising of—

(a) the Chief Justice

(b) two Judges to be nominated by the Chief Justice who shall ordinarily be the senior-most Judges of the Court.

(c) two other Judges, to be nominated by the Chief Justice, on rotation for such period as the Chief Justice decides, one of them being a Judge elevated from out of the Superior Judicial Service.

7. The Standing Committee shall be charged with the control and direction of the Subordinate Courts, so far as such control and direction are exercisable otherwise than judicially.

8. The Standing Committee shall have power, without reference to the Judges generally—

(1) (i) to dispose of all correspondence within its own Department urgent in its nature and not of general importance;

(ii) to make recommendations for promotion of Munsifs to the rank of Subordinate Judges, Subordinate Judges to the rank of Additional District and Sessions Judges, and Additional District and Sessions Judge to the rank of District and Sessions Judges, and their initial posting on promotion or appointment;

(iii) (a) to exercise the power exercisable by the Court under the Code of Criminal Procedure, 1973;

or

(b) to make recommendations to the Government for the vesting of special powers under any special Act;

(iv) to pass orders of transfers of Judicial Officers;

(v) To make recommendations for the deputation of Judicial Officers to posts under the Government of India, Government of Jharkhand or other State Government or to any Foreign Service;

(vi) to pass orders of suspension, initiation of departmental proceedings against Judicial Officers, and consequential orders in the said proceedings other than that of dismissal from service;

(vii) to issue Circulars, Orders and General Letters to the Subordinate Courts;

(viii) to dispose of any matter which might have been dealt with by the Judge-in-charge of the Administrative Department, but which he has referred to the Committee for its opinion;

(ix) to make recommendation to the State Government for compulsory retirement of any Judicial Officer;

- (x) to dispose of any matter referred to it by the Full Court;
- (xi) to pass orders on matters arising out of the revision of all periodical returns and statements furnished by subordinate Civil and Criminal Courts;
- (xii) to pass orders on representations relating to annual confidential remarks, as are referred to it;
- (xiii) to pass orders on recommendation to the Government on the applications of the Judicial Officers for various types of advances and loan;
- (xiv) to pass orders on permission for acquisition of property movable or immovable;
- (xv) to pass orders on departmental appeals by the class III and IV employees of the Civil Courts.

(2) If the Standing Committee so decides, or if there is no Standing Committee, powers mentioned in clauses (i), (iii), (vii), (x), (xi), (xii), (xiii), (xiv) and (xv) shall be exercisable by the Chief Justice.

(3) The Standing Committee may refer any matter for decision to the Full Court.

9. A Sub-Committee may be appointed by the Judges at a meeting of the Full Court, or by the Chief Justice, at any time to consider and report to the Full Court upon any matter which may be referred to it.

10. Such a Committee shall have power, without reference to the Judges generally, to enter upon and conduct any correspondence which the members may consider desirable in order to enable them to prepare their report.

11. Bills of Parliament and of the State Legislature forwarded to the High Court for opinion, proposals for the amendment of the law, and generally all matters connected with the development of the law shall ordinarily be referred in the first instance to Sub-Committees appointed under Rule 9 consisting of not less than three members.

12. It shall be the duty of the Registrar General to submit all papers relating to any matter to the Committee, if any, appointed to deal with it.

13. In all cases in which the Standing Committee has acted under Rule 8 or a Sub-Committee under Rule 9, the correspondence shall be laid on the table for the information of the Full Court, and a notice shall be circulated fortnightly to all the Judges of the matters which have, during the past fortnight been laid before such Committees, showing whether they have been disposed of, and, if so, in what manner.

14. (i) It shall be competent for any Judge to require that any matter within the cognizance of any Committee shall be referred to the Full Court.

(ii) In respect of any other matter within the cognizance of the Court, a Judge may request for holding of a Full Court meeting. When such a request is made, the opinion of the other members of the Full Court should be ascertained, and in case, the majority of the Judges are of the opinion that for consideration of the matter suggested a meeting of the Full Court be convened, such meeting shall be called ordinarily within two weeks.

15. (1) On the following matters decision shall be taken by the Judges at a meeting of the Full Court :—

(i) All appointments which by law are to be made by the High Court and which are not otherwise expressly provided for by the rules in this Chapter;

(ii) All recommendations for the dismissal from office of Judicial Officers;

(iii) Proposals for designating Advocates as Senior Advocates under Section 16(2) of the Advocates Act, 1961;

(iv) Matters relating to the service conditions, facilities and amenities of the Judges of the Court;

(v) Constitution of Rule Committee under Section 123 of the Code and nominating Members of the Rule Committee;

(vi) Consideration of matters relating to the Chief Justices' Conference;

(vii) High Court Calendar.

(2) The following matters on which Judges have to be consulted, may be disposed of by circulation of files :

(i) Proposed changes in the law where the proposal emanates from the Government or, in other cases,

where a Committee or any Judge of the Court considers that action is called for.

(ii) The Administration Report yearly submitted to Government when passed by the Judges of the Standing Committee.

(iii) Rules which when published will have the force of law.

(iv) Subjects connected with the relation between the Supreme Court and the High Court.

16. Except for some special reason, the papers relating to any matter for discussion at a meeting of the Full Court shall be circulated to all the Judges before the day of the meeting.

17. The proceedings of all meetings of the Full Court and of the Standing Committee shall be recorded in books to be kept for that purpose by the Registrar General and shall be at all times open to inspection when called for by any of the Judges.

18. (1) The Chief Justice may, on grounds of administrative exigencies or in the interest of administration, pass an order at any time suspending the operations of Rules 6, 7 and 8 either indefinitely or till such time as he specifies in the order.

(2) If such an order as is mentioned in sub-rule (1) is passed, the functions and powers of the Standing Committee shall be performed and exercised by the Full Court.

CHAPTER III

OFFICES OF THE COURT; SITTINGS AND VACATION, ETC.

19. Except during Vacation and on Saturdays and Holidays, the offices of the Court, shall, subject to any order by the Chief Justice, be open daily from 10.00 A.M. to 5.00 P.M. but no work unless of an urgent nature, shall be admitted after 1.30 P.M.

20. The offices of the Court shall, except during Vacation and Second Saturday, be open on Saturdays from 10.00 A.M. to 5.00 P.M. but no work, unless of an urgent nature, shall be admitted after 1.30 P.M.

Notification

High Court Notifn. dated 5th November, 2003.—In partial modification of Rule 20 of Chapter III in Part-I of the High Court of Jharkhand Rules, 2001, the offices of the Court shall, except during vacation and second Saturdays, be open on Saturdays from 10.00 a.m. to 5.00 p.m., but no work, unless of urgent nature, shall be admitted after 1.30 p.m.

This amendment shall come into force with effect from 1st December, 2003.

By order of the Court.

21. Except on the days which are holidays both for the Court and the offices of the Court, the offices of the Court shall be open during Summer Vacation, Puja, Christmas and New Year holidays of the Court at such time as the Chief Justice may direct.

22. The Chief Justice may, during any Vacation, appoint one or more Judges as Vacation Judges to hear matters of urgent nature. The Vacation Judges may hold Court either in Single Bench or in Division Bench as the situation warrants during the “Vacations”.

CHAPTER IV

SUPERVISION AND CONTROL OF THE SUBORDINATE COURTS, ZONAL DIVISIONS, ZONAL

ADMINISTRATIVE JUDGES

23. Zonal Divisions :—For more effective control and supervision of the Subordinate Courts, the State is divided in following Zones :—

Zone I—comprising districts of Ranchi and Lohardaga.

Zone II—comprising districts of Singhbhum (West), Singhbhum (East) and Saraikela.

Zone III—comprising districts of Sahebganj, Godda, Pakur, Dumka and Jamtara.

Zone IV—comprising districts of Deoghar, Giridih and Dhanbad.

Zone V—comprising districts of Hazaribagh, Bokaro, Koderma and Chatra.

Zone VI—comprising districts of Palamau, Gumla, Latehar and Simdega.

The Chief Justice may from time to time change, alter, modify or vary Zones, Zonal structure or the Zonal composition.

24. Zonal Judges shall.—(i) inspect the Civil Court of their respective Zones as and when the need arises or at least once in a year.

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [(ii) present inspection note to the Chief Justice which, in turn, will be placed before the Standing Committee or the Full Court, as the case may be;]

(iii) examine the periodical returns and statements furnished by the Subordinate Courts,

(iv) examine inspection notes of the Districts and Subordinate Courts which will be placed before them in all the administrative matters relating to Court building, residence etc.

(v) do any other work which the Chief Justice may entrust to them with regard to their respective job.

Ins. by Third Amendment Rules, 2006. [24-A. First three senior most Judges of the Court including the Chief Justice may.**—(i) Inspect any Civil Court of the State at any time;

(ii) present inspection note which, in turn, will be placed before the Standing Committee or the Full Court, as the case may be;

(iii) examine the periodical returns and statement furnished by the Subordinate Courts;

(iv) examine inspection notes of Districts and Subordinate Courts which will be placed before them in all the administrative matters relating to Court building and residence etc.

(v) do any other work as may be deemed fit in the interest of efficient administration of Civil Courts.

25. The Chief Justice will nominate the Judge(s) incharge of each Zone(s).

CHAPTER V

OFFICERS OF THE REGISTRY OF THE COURT AND THEIR FUNCTIONS

26. (a) The following Officers will constitute the Registry of the Court :—

1. Registrar General;
2. Registrar (Vigilance and Inspection);
3. Registrar (Administration);
4. Registrar (Establishment);
5. Principal Secretary to the Chief Justice.
6. Joint Registrar (Judicial);
7. Joint Registrar (Establishment);
8. Joint Registrar (List & Computer);
9. Joint Registrar (Vigilance);
10. Joint Registrar (Administration);
11. Deputy Registrar(s);
12. Assistant Registrar(s).

(b) The Chief Justice may, from time to time, add, vary or change the composition of the Registry or the nomenclature of the Officers.

27. The Chief Justice will decide, from time to time, the duties to be performed, and the functions to be discharged by any of the officers of the Court, and the designation of the officials.

28. Appointment of Judicial Officers in the Registry of the Court will be at the pleasure of the Chief

Justice.

29. Subject to general power and supervision of the Chief Justice, the Registrar General shall be Chief Executive Officer of the Court and also the head of the department having control over all the ministerial staff of the Court excepting the members of the Registry. He will be competent to sanction the loans from the G.P.F. advance. He shall deal with and sanction leave applications of all Officials in the Registry of the Court below the rank of Deputy Registrar. The leave applications of the officers in the rank of Deputy Registrar and above shall be submitted by the Registrar General to the Chief Justice for sanction.

30. (1) In addition to the powers conferred upon him by other rules, the Registrar General shall have the following duties and powers :—

(i) To issue notices on an application for Probate or Letters of Administration or for revocation of the same;

(ii) To dispose of all matters relating to Court fees or to the service of notices or other processes;

(iii) To dispose of an application under Order XXII, Rules 2, 3, 4 or 10 and to amend the record, if necessary, except in cases under appeal to Supreme Court.

(iv) To appoint or discharge a next friend or guardian ad litem of a minor or person of unsound mind, except in cases under appeal to Supreme Court and to amend the record accordingly.

(v) To dispose of an application under Chapter XII, Rules 95 to 100 and to amend the record if necessary.

**Deleted vide Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [(vi) x x x]

**Deleted vide Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [(vii) x x x]

(viii) To issue notice of an application for substitution of names in an appeal to Supreme Court.

(ix) To require any memorandum of appeal, petition, application or other proceeding presented to the Court to be amended in accordance with the procedure or practice of the Court.

(x) To call for records from Subordinate Courts.

(xi) To dispose of requisitions by Subordinate Courts for record and documents.

(xii) To dispose of an application for the return of a document.

(xiii) To require any person or party to file an affidavit with respect to any application or matter in respect of which he has power to exercise any discretion or to make any order.

(xiv) To stop at his discretion the issue of all or any papers to any person who has failed to pay any fee or charges due to the Court.

(xv) To give leave to search the records of the Court under the rules in that behalf.

(xvi) To dispose of all applications for copies of records whether presented by parties or by persons who are not parties to the proceedings to which such records relate.

(xvii) To decide the question of the necessity for transcribing and printing any documents not specifically applied for by the parties to an appeal to Supreme Court.

(xviii) To call for a further deposit when the deposit already made by the Appellant in an appeal to Supreme Court is not sufficient to defray the cost of preparing the record.

(xix) To order payment in the interest accruing on government Promissory Notes under Order XIV, Rule 7 and to order the refund of any unexpended balance under Order XLV, Rule 12.

(xx) To direct in what newspapers the publication referred to in Order XLV, Rule 9A of the Code of Civil Procedure, shall be made :

Provided that the Registrar General may refer any matter under this rule to the Court for orders.

(2) The Chief Justice may direct that any or all of the above functions shall be performed by any other judicial Officer in the Registry.

31. Subject to any orders to be passed by the Chief Justice, directions issued by him from time to time, and subject to any amplification of hereinbelow mentioned duties or functions, the **Registrars** and other Officers mentioned hereinbelow shall deal with the following matters and be in-charge of the works as indicated

hereinbelow :—

Registrar (Administration).—All the matters relating to Civil Courts, Record Room of the High Court, Court premises and Court Rooms and all residences in the pool of the Court including Judges' residences.

Registrar (Establishment).—All matters relating to High Court establishment.

Registrar (Vigilance & Inspection).—He will be incharge of the Vigilance Department of the Court and assist the Judges in inspection of the Civil Courts and compliance of minutes of the Inspecting Zonal Judges. Incidental returns from Civil Courts including disposal charts of Judicial Officers.

Joint Registrar (Judicial).—Incharge of Accounts (general) Department of the Court, drawing and disbursing officer of the Court and compliance of judicial orders and supervising the judicial sections of the Court.

Joint Registrar (List & Computer).—Incharge of the filing Section. All matters relating to Computer. Computerisation of the High Court. List, pendency, figure and receiving of memo of appeals, applications, and other judicial matters.

Joint Registrar (Establishment).—Matters relating to Appointment Section.

Joint Registrar (Administration).—Matters relating to Court administration other than the work of Joint Registrar (Judicial), including Court Office.

Deputy Registrar (Protocol).—All matters relating to protocol.

Deputy Registrar(s) & Assistant Registrar(s).—Doing such works, performing such duties or discharging such functions as the Registrar General, with the approval of the Chief Justice, may assign to them.

32. The Registrar General may with the previous approval of the Chief Justice delegate any of his functions under these rules except those which are of a judicial or quasi judicial character to any Registrar, or other officers of the Registry of the Court.

PART II

PROCEDURE AND PRACTICE

CHAPTER VI

CONSTITUTION OF BENCHES, POWERS OF BENCHES AND OFFICERS OF THE REGISTRY

A : CIVIL MATTERS

SINGLE JUDGE

33. The following matters be heard and disposed of by a Single Judge :—

- (i) (a) Appeal from an order and any cross-objection therein,
- (b) First Appeal from an original decree arising out of a suit and any cross-objection therein
- (ii) Second Appeal from a decree or order and any cross-objection therein.
- (iii) A motion to admit an application and an application when admitted :
 - (a) for an order under Section 22 or Section 23 of the Code or for an order under Section 24 of the Code for the transfer of a case;
 - (b) under Section 115 of the Code or under Section 25 of the Provincial Small Causes Courts Act,
 - (c) Under Order XLIV Rule 1 of the Code arising out of an appellate decree.
 - (iv) A suit coming before the Court in the exercise of its ordinary or extraordinary original civil jurisdiction.
 - (v) A proceeding under the Indian Companies Act, 1956, the Indian Trusts Act, 1882 or the Indian Patents and Designs Act, 1911.
- (vi) Any other application—
 - (a) which under these rules may be made to a Judge sitting alone;
 - (b) which under these rules is not expressly required to be made to a Bench of two or more Judges or to the Registrar General;

(c) which is made in any matter within the jurisdiction of a Judge sitting alone and which is not otherwise expressly provided for.

(vii) A case coming before the Court in the exercise of its ordinary or extra-ordinary original criminal jurisdiction, except the cases under Section 15 of the Contempt of Courts Act, 1971.

(viii) Cases under Representation of Peoples Act, 1951 (on nomination by the Chief Justice)

(ix) Company matters, Probate and Letters of Administration matters of original jurisdiction (on nomination by the Chief Justice).

(x) Appeal and Reference under the Trade Marks Act, 1940.

(xi) All writ petitions under Article 226 or 227 of Constitution, except those provided hereunder.

Division Bench

34. The following matters may be heard and disposed of by a Division Bench :

(1) All appeals under clause 10 of the Letters Patent against the judgments of Single Judges.

(2) All writ petitions :

(a) relating to public interest litigation;

(b) where vires or validity of an Act of Legislature or any subordinate legislation is under challenge;

(c) relating to taxation matters;

(d) against the judgments of tribunals constituted under Articles 323-A and 323-B of the Constitution of India;

(3) Other matters :

(a) all matters which, by any law or any judgment having force of law are required to be heard by Division Bench;

(b) All matters which are referred to a Division Bench;

(c) All appeals against the judgments and decrees passed by the Family Courts under Section 19 of the Family Courts Act, 1984;

(d) Miscellaneous Appeals arising out of an award passed under the Motor Vehicles Act, 1988 or the Workmen's Compensation Act, 1923.

Explanation.—The expression “matters relating to taxation” includes those arising out of or relating to all tax statutes including Income Tax Act, 1961; Estate Duty Act, 1952, Wealth Tax Act, 1957, Customs Act, 1952, Central Excise Act, 1944, Gold (Control) Act, 1968, Bihar Agricultural Income Tax Act, 1948, Bihar Finance Act, 1981 etc.

B : Criminal matters

Single Judge

Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). **[35. (1) The following matters may be heard and disposed of by a Single Judge :

(a) Applications for bail and quashing (matters arising out of Section 482 of Cr PC).

(b) Miscellaneous petitions for transfer of criminal cases.

(c) Applications for cancellation of bail.

(d) Criminal Revisions;

(e) Criminal Appeals against substantive sentence of not more than 10 (ten) years;

(f) Appeal against judgment of acquittal in which a substantive sentence of less than 10 (ten) years of imprisonment could have been passed;

(g) A case coming before the Court in the exercise of its ordinary or extra-ordinary original criminal jurisdiction, except the cases under Section 15 of the Contempt of Courts Act, 1971;

(h) Appeal, application or reference under the Code of Criminal Procedure, other than the cases as provided hereunder.

(2) As far as practicable application under Section 482 of the Code of Criminal Procedure and Criminal Revisions shall be listed before the Zonal Judge in-charge of the Zone in which the Court from out of whose

orders the matter arises, is situate. In order to comply with the requirement of this sub-rule, in the cause title of every such petition, the name of the district from where the matter has arisen, shall be mentioned.]

Division Bench

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [36. The following matters may be heard and disposed of by a Division Bench :—

(i) Appeal or reference under the Code of Criminal Procedure in a case in which a sentence of death or of imprisonment for life has been passed.

(ii) Appeal against judgment of acquittal in which a substantive sentence of 10 (ten) years imprisonment or more could have been passed.

(iii) Appeal under Section 377 of the Cr PC or a case in which notice has been issued under Section 401 of the Cr PC to an accused to show cause why the sentence should not be enhanced;

(iv) Appeal, revision or reference in which a substantive sentence of 10 (ten) years imprisonment or more has been passed.]

Full Bench

37. The following matters must be placed and shall be heard by a Bench of three Judges :—

(i) Appeals to the High Court under Clause 10 of the Letters Patent from the judgment of a Bench confirming the judgment of a lower Court under Section 98 of the Code of Civil Procedure,

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [(ii) Reference under Section 60 of the Indian Stamp Act (II of 1899);]

(iii) A point of law reserved under the provisions of Clause 18 of the Letters Patent.

(iv) Such other matters as may be referred to the Full Bench.

38. Notwithstanding anything to the contrary in these Rules the Chief Justice may direct that any application, petition, suit, appeal or reference shall be heard by a Full Bench.

39. A Full Bench shall be a Bench of any number not less than three Judges.

Business Relating To Supreme Court

40. The business of the Supreme Court shall be laid before the Bench presided over by the Chief Justice unless he otherwise directs.

General

41. When in an appeal in any civil matter heard by a Bench of two Judges, a difference of opinion arises between them on a point of law, if either of the Judges desire that the appeal be referred, it shall be referred to and heard and determined by such Judge or Judges as the Chief Justice may appoint. The appeal shall be re- argued before the Judge or Judges to whom it is so referred either sitting apart from or with the referring Bench as the Chief Justice directs.

42. Save as provided by law or by these Rules or by an order of the Chief Justice, every other case shall be heard by a Bench of two Judges.

43. Subject to the provision of these Rules, the Chief Justice shall direct what case or classes of cases shall be placed before each Judge or Bench.

44. (i) Civil Revision application, Misc. Appeal and First Appeal shall generally and in normal course be placed before the Incharge Zonal Judge, or before any Single Judge, as may be directed by the Chief Justice.

(ii) In order to comply with the aforesaid requirement, therefore, in the cause title of every Civil Revision, Miscellaneous Appeals and First Appeal, the name of the district from where the matter has arisen shall be mentioned in bold letters.

45. Matters, Appeals and applications entertainable by the Registrar General shall be presented to him and not to a Bench.

CHAPTER VII DOCUMENTS, APPLICATIONS AND AFFIDAVITS

A : Documents

46. The officers of the Court shall not receive any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly written, typed - written or lithographed in double - line spacing, on one side of standard petition paper, demi - fullscape size, or of the size of 29.7 cms x 21 cms. or paper which is ordinarily used in the High Court for the purpose. Copies filed for the use of the Court shall be neat and legible and shall be certified to be true copies by the advocate on record or by the party, in person, as the case may be.

47. No document in language other than English or Hindi shall be used for the purpose of any proceedings before the Court, unless it is accompanied by—

- (a) a translation agreed to by both parties; or
- (b) a translation certified to be true translation by a translator appointed by the Court; or
- (c) the said document is translated by a translator appointed or approved by the Court.

[Explanation.—The provisions of this rule shall, so far as may be, apply also to a document in English/Hindi of which a part is in a language other than English or Hindi]

B : Applications and Affidavits

48. (1) Every application to the High Court shall be by a petition written in the English language.

(2) Every petition shall state concisely and clearly—

- (i) the facts, matters and circumstances upon which the applicant relies;
- (ii) the matter of complaint, if any, and the relief sought.

(3) (i) The facts stated in every petition shall be verified either by solemn affirmation or on oath of the petitioner, or by a separate affidavit annexed to the petition, the solemn affirmation or oath being made in every case before a Commissioner for Affidavits or other officer appointed for the purpose.

(ii) Affidavits may also be filed in support of facts brought to the notice of the Court otherwise than by petitions referred to in sub-rule 3(i). The solemn affirmation or oath required for such affidavits shall also be made before the Commissioner for Affidavits or other officer appointed for the purpose.

Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [Note** : An affidavit sworn before a Notary is not an affirmation before an officer appointed by the High Court. High Court will not entertain such an affidavit.]

49. (1) Every petition and every affidavit with annexures, if any, shall be titled.

“IN THE HIGH COURT OF JHARKHAND AT RANCHI”,

and shall be—

- (i) couched in proper language;
- (ii) signed and dated either by the petitioner or declarant or his pleader;
- (iii) presented either by the petitioner or declarant or his recognised agent or his pleader or some person appointed in writing in each case by such pleader to present the same.

(2) In case of the annexure to an affidavit being not the original document or its certified copy, the declarant shall also state in the affidavit that the annexure is a true copy of the original :

****Subs.** by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [(3) Unless otherwise specifically provided for in the Rules of the Court, a copy of every petition or affidavit with its enclosure, if any, shall be served upon counsel for the other side and the receipt showing service of the same must be filed along with the petition or the affidavit in question, unless otherwise directed by the Court for any sufficient reason.

If the petition or affidavit has to be heard or considered by a Division Bench, a clear readable and in order second copy thereof with its enclosure, if any and where the petition is filed in an appeal and has to be heard by the Division Bench a copy of the judgment appealed against shall also be filed for use of the Court.]

Note.—This rule shall apply as far as possible to Vakalatnamas, process fee sheets and other similar papers.

50. Here and throughout these rules unless there is anything repugnant in the subject or context “pleader” means advocate, Vakil or attorney.

****Subs.** by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [**51.** When a Vakalatnama is given by a party, who can sign his or her name, it must be signed by the party. When the party cannot sign his or her name, the Vakalatnama must be endorsed as follows—

I, A.B. do hereby appoint C.D. Advocate to act for me in the above named cause, in token whereof I have affixed my left thumb impression in the presence of E.F.

X (Left thumb impression)

and I, E.F. do hereby attest the above thumb impression as having been affixed in my presence by A.B. who is known to me.

Signature]

52. (1) Every petition shall immediately after the cause title, state the Article, section and statute under which it is made.

(2) Every petition or affidavit containing any statement of facts shall be divided into paragraphs, every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.

53. Every petition shall, when presented by a pleader bear his signature as such pleader.

54. Every Commissioner before whom a petition is verified or an affidavit is made shall at the end of the petition or affidavit certify the verification of the petition or making of the affidavit in the prescribed form. He should also sign each page of the petition or the affidavit.

55. Every document referred to in an affidavit shall be marked as an exhibit and shall bear the certificate of the Commissioner before whom the affidavit was made in the prescribed form.

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

57. Every person verifying a petition or making an affidavit, if not personally known to the Commissioner before whom the petition is verified or the affidavit is made, shall be identified to such Commissioner by someone known to him; and the Commissioner shall state at the foot of the petition or affidavit, as the case may be, the name, address and description of the person by whom the identification was made.

58. Every Pardanashin woman verifying a petition or making an affidavit shall be identified in the manner specified in the preceding rule and every such petition or affidavit shall be accompanied by the affidavit of identification of such woman made at the time by the person who identified her.

59. The Commissioner before whom any verification of a petition or any affidavit is about to be made shall before the same is made, ask the person proposing to make such verification or affidavit if he has read the petition or affidavit and understand its contents, and if the person proposing to make such verification states that he has not read the petition or affidavit, or appears not to understand its contents, the Commissioner shall before allowing the verification or affidavit to be made, cause it to be read and explained to the declarant in a

language which he understands.

60. Every interlineation, alteration or erasure in a petition or affidavit shall be authenticated by the initials of the Commissioner before whom the petition was verified or the affidavit was made, and shall be so made as not to render it impossible or difficult to read either the interlineation, alteration or erasure or the original word or figure which may have been altered or erased.

61. In administering oaths and affirmations to declarants the Commissioner shall be guided by the provisions of the Indian Oaths Act, 1873 (X of 1873) and the following forms shall be used :

Oaths

I.....swear in the name of God that this my declaration is true, that it conceals nothing and that no part of it is false.

Affirmation

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

62. No affidavit shall be read at the hearing of any appeal, application or other proceeding unless a copy thereof has been served upon the other party or his pleader at least seven days before the hearing, or if the affidavit is only in answer to the opponent's affidavit, at least 24 hours before the hearing :

Provided that this rule shall not apply to urgent motions or applications or to motions or applications made ex parte.

63. The Registrar General may permit clerical errors in any memo- randum of appeal, application or affidavit which has been filed in the Court to be corrected in his presence by the appellant, applicant or declarant or by his pleader :

Provided that the Registrar General shall initial and date every such correction.

64. The Registrar General may refuse to receive an affidavit where in his opinion interlineations, alterations, or erasures are so numerous as to make it expedient that the same should be rewritten.

65. Where a specific time is limited for filing affidavits, no affidavit filed beyond that time shall be entertained or used, except by leave of the Court.

66. No petition or affidavit shall be read or used in the High Court which does not comply with the provisions of this Chapter.

67. (i) The High Court may appoint advocates to function as Commissioners for the purpose of administration of oaths and affirmations under clause (b) of Section 139 of the Code of Civil Procedure, Clause (b) of sub-section (1) of Section 297 of the Code of Criminal Procedure and Clause (a) of sub-section (2) of Section 3 of Oaths Act, 1969.

(ii) No advocate shall be qualified for appointment as Oath Commissioner unless he has, at least for two years, but not exceeding five years, been an advocate of the High Court.

(iii) The eligible advocates may submit their applications for appointments as Oath Commissioners to the President of the High Court Bar, who shall forward the same with his comments about the suitability of the candidates to the Registrar General of High Court and any such application may be accepted if he is satisfied about the suitability of the candidate for appointment as Oath Commissioner.

(iv) Such an Oath Commissioner will hold office for a term of two years from the date of his appointment or until a date on which he completes five years of practice at the Bar which ever is earlier :

Provided that the High Court may curtail the term if it thinks fit to do so :

Provided further that the High Court may relax the conditions regarding eligibility and duration of the term of office of an Oath Commissioner on compassionate grounds or in the public interest.

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [(v) Such an Oath Commissioner may charge remuneration of Rs. 10.00, or such other amount as may be prescribed for each affidavit and shall keep a register in the form prescribed in sub-rule (viii) infra in which all affidavits shall be entered. A written receipt for the amount paid shall be given by the Commissioner to the deponent. The receipt shall be in the

printed form consisting of a foil and counter foil, the foil being handed over to the person paying the money and the counter foil being kept by the Commissioner for purpose of inspection. The Commissioner will be entitled for an additional fee from a deponent when he is required to attend the deponent's residence the amount of fee as prescribed in note 3 below sub- rule (3) of Rule 247 of Chapter XXI of the Jharkhand High Court Rules. The aforementioned charges will be in addition to any stamp duly payable on an affidavit under the Indian Stamp Act, 1899, Schedule I Article IV.]

(vi) With a view to ensure that all affidavits which are attested by an Oath Commissioner are entered in the register and receipt for the money received by him, the Registrar General/Deputy Registrar will obtain such certificates from the Oath Commissioners of their registers and receipt books containing counter foils as may be considered necessary.

(vii) The register and receipt books consisting of counter-foil maintained by each Oath Commissioner shall be kept by him in safe custody and deposited in the office of the Registrar General within fifteen days after expiry of his terms of office and a receipt obtained from the official nominated for the purpose. The record shall be kept in the office of the Registrar General and preserved for five years and destroyed thereafter unless it is required in proceedings before any authority in connection with the investigation, enquiry or trial of a case and in that event, it shall be destroyed after the final decision in the proceedings of the case.

(viii) A register of affidavit in the following form should be maintained in which every application to have an affidavit attested and every affidavit verified, should be entered :

FORM OF REGISTER

Register of Affidavits attested in the High Court of Jharkhand at Ranchi

Sl. No., Date of application or of tendering affidavit, Name and address of person tendering an application (if any) or affidavit, Nature of affidavit briefly stated if the affidavit relates to a cause in Court,, the cause should be specified, Detail of exhibit if any attached to affidavit, Date of administering Oath affirmation, Name and or address of witness identifying the deponent,, if he is not known to officer administering Oath & his signature or thumb impression, Signature or thumb impression of the deponent, Name of the Court or office in which the affidavit is intended to be filed, Signature and designation of the Officer

1, 2, 3, 4, 5, 6, 7, 8, 9, 10

(ix) Above rules along with the general rules regarding affidavits and forms should be followed.

(x) The functions of the High Court as contained in this rule shall be performed either by the Chief Justice or by a Judge nominated by him for this purpose.

CHAPTER VIII

FILING PROCEDURE, REGISTRATION AND

LISTING OF CASES

A : Filing Procedure

68(1). All applications, petitions, memos of appeal, affidavits etc. shall be filed at the Centralised Filing Counter before the Designated Officer to be nominated by the Chief Justice and shall be accompanied by a Filing Sheets in the prescribed proforma primarily meant for entering in the Computer Data.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [68(2)** In absence of registrar any memorandum of appeal or application may be presented before the Additional Registrar. If on any Court day both the Registrar and the Additional Registrar are absent, and memorandum of appeal or application which should under these rules be presented to the Registrar or in his absence to the Additional Registrar, and might be barred by time, may be presented to the Deputy Registrar or in his absence to the Assistant Registrar who shall certify thereon in writing in his hand that such memorandum of appeal or application was on that day presented to him.

Provided always that no such presentation to the Deputy Registrar or Assistant Registrar shall be of

any effect unless such memorandum or application be presented to the Registrar or the Additional Registrar on the next subsequent day on which he is available for such presentation.

68(3) No application to the same effect or with the same object as a previous application upon which a Judge has passed any order, other than an order or reference to another Judge or Judges, shall except by way of appeal, be presented to any other Judge or Judges, on behalf of any person on whose behalf such previous application was presented.

68(4) The Advocate who files an appeal shall examine the case in the light of Order XXVII-A of the Code of Civil Procedure and certify that in his opinion, a notice to the Attorney-General of India or the Advocate General of the State under the said Order is/is not necessary.]

69. Except interlocutory Applications (IA), applications, petitions and memos of appeal shall be filed only after stamp report and after the defect, if any, pointed out by the stamp reporter have been removed, unless the Designated Officer be of the opinion that the stamp report regarding the defects is not correct or that the defects can be ignored or that they are not curable:

Provided that the Registrar General, authorised in that behalf, may permit any application, petition or memo of appeal to be filed on the last day of limitation without stamp report.

70. On receipt of the document, the officer Incharge of the filing counter shall endorse on the document the date of receipt and enter the particulars of the said document in the register of daily filing and cause it to be sent to the department concerned for examination. If, on scrutiny the document is found in order, it shall be duly registered and given a serial number of registration. It shall also be entered in the Computer as a Data. The Chief Justice may issue instructions from time to time, with regard to the procedure for filing, especially having regard to computerization requirements and once issued, those instructions shall be applicable and enforceable as being part of this Chapter.

71. Where a document is found to be defective, the said document shall after notice to the party filing the same, be placed before the Registrar General/Designated Officer. The Registrar General/Designated Officer may, by an order in writing, decline to receive the document if, in his opinion, the mandatory requirements of the rules are not satisfied. Where, however, the defect noticed is formal, the Registrar General/Designated Officer may allow the party to rectify the same in his presence, but in other cases, he may require the party to obtain an order from the Court permitting the party to rectify the same and for this purpose may allow to the party concerned, such time as may be necessary but not exceeding twenty-eight days in aggregate.

72. The filings shall be received at the counter from 10.30 A.M. to 1.00 P.M. from 2.15 P.M. to 3.30 P.M. on Court working days and from 10.30 A.M. to 1.00 P.M. on Saturdays.

73. (a) The applications, petitions, memo of appeal including interlocutory application (IA), shall be in paper-book form with index typed on fullsize size water marked plain demil paper (pie paper) or bond paper capable of being used in the printer of the computer, with a margin of two inches containing approximately 24 inches, paginated with annexure numbers and shall be accompanied by a synopsis of the case giving the relevant dates of events in chronological order.

(b) Hand written document used as annexures if not easily readable in photostat, shall be accompanied by true typed copies.

74. All filings shall be noted in the Computer as well as in the Register maintained for the purpose under the supervision of the Designated Officers who shall thereafter grant acknowledgement receipt.

75. After entries are made, the Designated Officer shall either himself or through office staff under his supervision check the following :—

(a) Format of cause title, including full and complete address of all the parties including the details of the Police Station, Post Office and Postal Index Number.

(b) Receipt showing service of copy on the Advocate General/ other side as required under these Rules or any other statute or Rules;

(c) Sufficiency of Court Fee Stamp.

(d) Provision of law under which the filing is made.

(e) Certified copy of the order under challenge and/or of any order required under these Rules, or under any other statute or Rules;

(f) Relief sought for.

(g) Sufficiency of number of copies as required under these Rules.

(h) Other requirements under these Rules or statutory requirement, if any :

Provided that deficiency of Court Fee Stamps will not be considered to be a defect for the purpose of filing if it is accompanied by an application seeking leave to pay deficit stamps within a specified period or to contest stamp report.

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [76. Except where the Designated Officer is of the opinion that the stamp report regarding the defects is not correct or that defects can be ignored or that they are not curable, the cases where any defect as specified in Rule 75 is noticed, the filing shall be returned to the person presenting the same with intimation regarding the defects to be re-filed after removing the defect within seven days. Any re-filing after the expiry of seven days from the date of return shall be subject to law of limitation.]

77. Where the Designated Officer is of the opinion that there is bonafide arguable point pertaining to any defect, he shall refer the matter to the Bench for orders or admission.

78. All defect free applications, petitions, memos of appeal etc. including such applications, petitions, memos of appeals in which the defects have been ignored or are considered to be not curable, shall be numbered under the respective heads of cases.

79. Defect free applications, petitions, memos of appeal, affidavits etc., shall immediately be sent to the concerned Section for being listed before the Bench.

80. Criminal Appeals, Criminal Revisions and Criminal Miscellaneous (Bail and Quashing) including motion slips filed before 1.00 P.M. shall ordinarily be posted for admission or orders, as the case may be, on the following day.

81. Where any interlocutory application is filed in a case which is running before the Bench, on urgency being shown, the same shall be laid on the records of the case without any delay.

82. (i) All cases shall be listed for admission along with interlocutory applications seeking interim relief(s), if any, chronologically in accordance with the date of filing. No matter shall be listed for admission out of turn unless so directed by the Chief Justice in this regard, notwithstanding the filing of an interlocutory application for interim relief(s).

(ii) It will be open to the petitioner to make a prayer for interim relief in the main application of a writ petition, except in cases where the law requires a separate application to be filed for this purpose.

(iii) All applications filed in the main case will be registered as interlocutory applications and shall be given a separate number subject to the law relating to payment of Court fee.

Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [82- A.** No interlocutory Application shall be listed unless a copy of such application is served in advance to the Counsel, if any, appearing for the other side.]

83. The provisions as contained in this Chapter so far as may be, shall be applicable to filing of Process Fee, Vakalatnama, documents, slips and any other papers relating to any case.

FORMAT

In the High Court of Jharkhand at Ranchi

(Civil/Criminal/Etc. Jurisdiction)

I.A. No. of year

in

C.W.J.C./F.A./S.A./Criminal Appeal etc. No. /(year)

in the matter of

A.
Petitioner/Appellant
Versus
B.
Respondent/Opposite party

B : Registration of the Cases

84. Nomenclature, groupwise, of all the matters for its registration to be filed in the Court, in supersession of all the previous nomenclatures relating to matters, as is shown hereunder :

Abbreviated form

Nature of Proceedings

(a) W.P.

(This stands for all writ petitions of civil nature, further subdivided in sub-groups, namely service matters; Industrial & Labour disputes; Tax matters, Public Interest Litigation) :—

(i) W.P.(S)—

Service matter;

(ii) W.P.(L)—

Industrial & Labour matter;

(iii) W.P.(T)—

Tax matter;

(iv) W.P.(PIL)—

Public Interest matter;

(v) W.P.(C)—

All other civil writs, i.e. those not falling in any of the above mentioned sub-groups.

(b) W.P.(Cr.) :

This stands for writ petitions relating to criminal matters, like “habeas corpus”, etc. for which no remedy is provided specifically under any statutory law.

(c) Civil Review :

Review petitions in all Civil Cases, including in Writ Petitions and L.P.As.

(d) F.A. :

First Appeal

(e) S.A. :

Second Appeal

(f) C.O. :

Cross Objections in an Appeal.

(g) Cr.M.P. :

The petitions of criminal nature including applications under Section 482 of Cr PC (quashing) and all applications under any other provision of the Cr PC or under any law dealing with the crimes or criminal matters, but will not include the applications filed under any provisions of the Constitution of India or a petition for bail or anticipatory bail.

(h) Cont. Case (Crl.)—

The petitions for initiating proceeding for Criminal Contempt.

(i) Cont. Case (Civil)

The petitions for initiating Civil Contempt proceedings.

(j) **Bail Applications :**

B.A.

Bail applications for grant of regular bail.

A.B.A. :

Bail applications for grant of anticipatory bail.

(k) C.M.P. :

All civil miscellaneous petitions not specifically categorised or mentioned in this Chapter such as those relating to Restoration, modification or clarification, Vacation or Stay order etc. etc.

(l) I.A. :

Interlocutory Applications in pending civil cases.

(m) M.A. :

Miscellaneous Appeal.

(n) C.R. :

Civil Revision.

(o) T.A. :

Tax Appeal. (The appeals as being filed in the High Court under relevant statutes from any order or judgment passed by a statutory authority under any tax statute, such as Section 260A of the Income Tax Act, 1961.)

(p) C.P. :

Company Petition - Petitions/Applications filed under the Companies Act, 1956.

(q) C.A. :

Company Appeals.

(r) E.P. :

Election Petition - Petitions filed under the Representation of Peoples Act, 1951.

(s) L.A. :

Letter of Administration.

(t) Probate Case :

Cases for issuing of Probate.

(u) Cr.A. :

Criminal Appeal.

(v) Cr.Rev. :

Criminal Revision.

(w) A.A. :

All arbitration Applications (earlier known as Request Case) including, Applications under Arbitration Act, 1940 or under the Arbitration and Conciliation Act, 1996, including the applications for appointment of arbitrator under Section 11(4), (5) or (6) of the 1996 Act.

(x) Arb.Appeal :

Appeals under the Arbitration Act, 1940 or the Arbitration and Conciliation Act, 1996.

(y) Tr.Pet. (Civi.)

Petition for transfer of Civil Cases.

(z) Tr.Pet. (Crl.)

Petition for transfer of Criminal Cases.

(z1) A.C.(D.B.)

Appeal case, i.e., any appeal before the Division Bench against the order of a Single Bench in any matter not specified herein, and not being a L.P.A.

(z2) A.C.(S.B.)

Appeal case, i.e., any appeal before a Single Bench against any Judgment or order of any Court or Tribunal in any matter not specified herein.

(z3) Cvt.

Caveat.

(z4) Cr.Ref.

Criminal Reference under Section 366, Cr PC.

(z5) Acq.App.

Appeal under Section 378, Cr PC or under any other provisions of law against an order of acquittal.

(z6) S.C.L.P. :

All petitions for leave to appeal to the Supreme Court under Article 133 of the Constitution of India or under any other provision against the judgment of High Court where appeal lies to the Supreme Court by Certificate/leave granted by the High Court.

(z7) L.P.A. :

Letters Patent Appeal.

Explanation.—Letters Patent Appeal means an appeal under Clause 10 of Letters Patent constituting the High Court of Judicature at Patna, as adopted by these Rules and made applicable to the Court under Section 27 of the Bihar Reorganisation Act, 2000.

(z8) C.Ref.

Civil Reference.

(z9) C.S.

Civil Suit.

COMMENT

Registration of appeal against acquittal.—Appeal registered by the Registry as “Government Appeal”—Rules require that it should have been registered as “Acquittal Appeal”—Appeal wrongly styled as “Government Appeal.”

In so far as the defect relating to this Court is concerned, the Registry has registered this appeal as “Government Appeal No. 4 of 2002”. Prior to the coming into force of the High Court of Jharkhand Rules, 2001, appeals against orders of acquittal were, indeed, being registered as “Government Appeals”, but after coming into force of the aforesaid Rules, vide Rule 84, the nomenclature of these types of cases has been changed and an appeal filed under Section 378 of the Code of Criminal Procedure against an order of acquittal is now required to be registered as “Acquittal Appeal”. This is clearly evident from Entry 5 of Rule 84 Jharkhand High Court Rules, 2001. Ignoring the aforesaid prescribed nomenclature under the Rules of 2001, the Registry has wrongly styled the appeal as “Government Appeal No. 4 of 2002”. [State of Jharkhand v. Jwala Singh & Anr., 2002 (2) JCR 2 : 2002 (2) East Cr C 46 (Jhr)].

85. For any other case, if no new nomenclature is shown above, it will be registered with same nomenclature as was existing prior to this rule, or as determined and prescribed.

CHAPTER IX

PROVISIONS RELATING TO LODGING/FILING OF CAVEATS

86. No application for interim relief or stay in any petition or appeal of any type whatsoever shall be entertained or considered by the Court unless the same is accompanied by a Caveat-clearance certificate issued by the Registry of the Court or, if a Caveat has been filed by a party, after notice upon the Caveator. Along with the notice the Caveator or his counsel shall be supplied with a copy of the petition or the memo of appeal as the case may be along with the application for stay or interim relief.

87. Any person claiming a right to be heard by the Court in any matter before any stay or any interim

relief of any nature is granted by the Court may at any time file a Caveat with the Caveat Section of the Registry giving full and complete particulars, as far as possible, including particulars relating to the cause title, case No., date of judgment etc. if these are available to the Caveator.

88. The Caveat Section shall maintain a list of all caveats and immediately on receipt of a Caveat enter the same in the Computer or make a record of the same in other form. Whenever a matter is filed where Caveat-clearance is required, the Caveat Section shall endorse thereupon by way of Caveat-clearance either that no Caveat has been filed in this case or if a Caveat has been filed, the particulars of the Caveat and the Caveator.

89. At the time the matter is listed in the Court and if the Caveat has been filed, the name of the counsel for the Caveator shall be printed in the cause list.

90. For the purpose of Court fee a Caveat shall be treated as a petition.

CHAPTER X NOTICE OF PROCEEDINGS TO ADVOCATE GENERAL

91. The Court may direct notice of any proceedings to be given to the Advocate General to the State who may appear and take such part in the proceedings as he may be advised.

92. The Advocate General of the State may apply to be heard in any proceedings before the Court, and the Court may, if in its opinion the interest of justice so requires, permit the Advocate General to appear and be heard subject to such terms as to costs or otherwise as the Court may think fit.

CHAPTER XI REFERENCE TO A LARGER BENCH

93. Whenever a Single Bench desires and the Chief Justice concurs, that any case shall be referred to a Division Bench, or whenever in any case a Single Bench or any other Bench is of the opinion that any earlier decision of the Court on a point of law, or usage having the force of law or otherwise is required to be reconsidered, the Chief Justice may refer such a case for decision by a larger Bench. The Bench making any reference to a larger Bench may either refer the whole case for hearing or may formulate questions of law or fact or both, for determination by such larger Bench and subject to any orders passed by the Chief Justice, the larger Bench accordingly shall hear the case and answer the reference.

CHAPTER XII APPOINTMENT OF GUARDIANS AND SUBSTITUTION OF LEGAL REPRESENTATIVES

94. The provisions of this Chapter shall apply so far as may be to applications for the appointment of guardians and for the bringing on the record legal representatives of deceased parties.

95. When a guardian ad litem of a minor respondent is appointed and it appears that the guardian is not in possession of any or sufficient funds for the conduct of the appeal on behalf of the respondent and that the

respondent will be prejudiced in his defence thereby, the appellant may from time to time be ordered to advance money to the guardians for the purpose of his defence and all money so advanced shall form part of the costs of the appellant in the appeal. The order shall direct that the guardian shall, as and when directed, file in Court an account of money so received by him.

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

COMMENT

Rule 96 runs counter to the scheme of the CPC and the scheme of Order XXII of the Code—Confers discretion in High Court sitting in second appeal—Impleading the legal representatives at second appellate stage without bringing them on record in the lower appellate Court and obtaining a decree in their presence.—*Alimuddin Ansari v. Wasia Khatoon*, 2004 (4) JCR 700 (Jhr) : 2005 (3) JLR 443.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [96- A.** A party to a decree or order desiring to appeal therefrom and to make the legal representative of a party who died between the Conclusion of hearing and pronouncement of Judgment, including decree or order was made, a respondent, may, if such legal representative has not been made a party to any subsequent proceedings under such decree or order, enter his name as a respondent in the memorandum of appeal if he presents therewith an affidavit showing that he did not know before the decree or order was made that such party has died or that he had no reasonable opportunity of informing the Court before such decree or order was made that such party was dead and stating such other facts as may be necessary in support of his application.]

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

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

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

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

(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest by, through, or from any party to such decree or order is affected, and such beneficiary, legal representative, assignee or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to appeal therefrom, he may name himself in the memorandum of appeal as an appellant if along with such memorandum of appeal he presents an application for leave to make himself an appellant and an affidavit stating such facts as may be necessary in support of his applications.

COMMENT

Invoking of provisions.—To transpose the proforma respondents as appellants, as they were not present at the time of filing of the appeal—Having no adverse interest to that of the present appellants—No bar in invoking the provisions—No impediment in granting leave to file the appeal in their name in place of deceased—Leave granted. [*Shivratri Devi & Ors. v. State of Jharkhand & Ors.*, 2005 (1) JCR 168 (Jhr)].

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

acting on his behalf in the litigation.

COMMENT

Rules 98 and 100—Substitution application—Appellant dying before presentation of the appeal—Rigour of limitation comes into play—Mere show of diligence taking shelter of Rule 98 not enough—Application not made within the limitation prescribed—Liable to be dismissed—Bona fide delay to be condoned by the Court on application. —Sumitri Devi v. State of Jharkhand, 2002 (2) JCR 628 (Jhr) : 2005 (3) JLJR 57.

99. Whenever any party to a proceeding pending in the Court dies and an application is filed for bringing on record the legal representatives of such party, such application shall be dealt with and disposed of in accordance with the procedure prescribed and contained in Order XXII of the Code and to that extent the provisions of this Order shall mutatis mutandis apply to all such proceedings.

100. (i) All matters covered by and all applications filed under this Chapter shall be disposed of by the Registrar General except in such cases which are, or appear to him to be, barred by limitation.

(ii) All matters or applications barred by limitation shall be referred by the Registrar General to the Court which, if it condones the delay, may remit the same to Registrar General for disposal in accordance with these Rules.

CHAPTER XIII JUDGMENT AND DECREE

101. Reserved judgments should ordinarily be pronounced within six weeks of the conclusion of the arguments. In the event of the judgments not being pronounced within three months of the conclusion of the arguments, the Chief Justice may either post the case for delivering judgment in open Court or withdraw the case and post it for disposal before an appropriate Bench.

****Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [**102(1).** Whenever any suit, appeal, reference or other proceeding has been heard by two or more Judges, and the Judges who heard the same have agreed to a written judgment therein, such written judgment, having first been signed by the Judges concerned may be pronounced by anyone of the Judges in the absence of the other or either of them.

102(2). Whenever any suit, appeal, reference or other proceeding has been heard by two or more Judges, and each of such Judges has written a judgment for himself or has agreed to a judgment written by another Judge and such judgments have been signed by any of the Judge or Judges who have written them, or, in the case of a judgment agreed to by two or more Judges by the Judge or Judges who have agreed, anyone of such Judges may pronounce on behalf of any absent Judge or Judges the judgment written or agreed to by a such absent Judge or Judges.

102(3). Every judgment delivered and every order passed by the Court shall be recorded by a Personal Assistant to Judge except when the Court delivers a written judgment.

102(4). Every judgment or order recorded by a Personal Assistant to Judge shall be filed by him with the paper-book of the case to which it relates within three days from the delivery of the judgment or passing of the order and at the end of his record he shall enter the dates of the passing of the order or delivery of the judgment and of filing with the record. He shall also initial such record and shall be responsible for its safe custody until he files it with the paper-book in the office.

102(5). When a judgment or order recorded by a Personal Assistant to Judge has been filed, the Court Master shall submit it for signature to the Judge or Judges who delivered or passed it, unless such Judge or Judges otherwise order or have resigned or proceeded on leave, or are absent on account of illness or any other cause.

102(6). When a written judgment has been delivered or when a judgment or order recorded by a Personal Assistant to Judge has been signed by the Judge or Judges, who delivered or passed it, the Court Master shall seal such judgment or order with the seal of the Court.]

103. All decrees and orders shall be drawn up in English.

104. As soon as a decree or order has been drawn up, the Joint Registrar shall cause a notice to be exhibited on the notice board stating that such decree or order has been drawn up and that it may be perused by any party or by his pleader within one week from the date of the posting of the notice.

105. When such notice has been posted, any party or his pleader may before the expiry of the time prescribed in the last preceding rule, peruse the decree and either sign it or file an objection to it on the ground that there is a clerical error or omission in the judgment, or that the decree is not in accordance with the judgment.

106. Every such objection shall state clearly what the clerical error or omission is, or in what respect the decree is not in accordance with the judgment and it shall be signed and dated by the party objecting or by his pleader.

****Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [107.** When any such objection is made the Joint Registrar shall put up the appeal or the case together with the judgment therein, the draft decree or order and the objection, for orders before the Judge or Judges, or one of them, who delivered the judgment, or if such Judge or Judges has or have ceased to be a Judge or Judges of the Court, or are absent on leave or furlough, then before such Judge or Judges as the Chief Justice may appoint for that purpose.]

108. If no such objection is filed on or before the date specified in the notice, the Joint Registrar, having first dated the decree as of the day when the judgment was delivered, shall sign it and seal it with the seal of the Court.

109. Under no circumstances shall any judgment, decree or order be altered, varied or departed from, in any particular, except under an order in writing of the Judge or Judges who passed or made such judgment, decree or order, or under an order made on appeal from such decree or order, or under an order made in review.

CHAPTER XIV

PROBATE AND LETTERS OF ADMINISTRATION

110. Every petition or caveat made under this Chapter shall set forth the petitioner's or caveator's full name, the name of such petitioners or caveator's father, his caste or religious persuasion, his rank or degree in life, profession, occupation or trade, and his true place of residence.

111. The word "Will" in this Chapter includes a "Codicil".

112. When an application for grant of Probate or Letters of Administration is made, a copy of the application and the valuation statement required by Section 19-I(1) of the Court Fees Act, 1870 (VII of 1870) shall be sent together with the notice under Section 19-H(2) of the said Act to the Chief Controlling Revenue Authority.

113. Every application for Probate, or for Letters of Administration with or without the Will annexed, shall be accompanied by—

(a) A certificate of the Registrar General as to duty having been paid, or a certificate of the Taxing Officer that no duty is payable.

(b) A certificate of the Registrar General that no intimation has been received by this Court from any other High Court or from any District Court, of any grant of Probate or Letters of Administration of the property and credits of the deceased with effect throughout India except the State of Jammu and Kashmir.

114. The Registrar General may, if he deems it necessary, require proof, in addition to the usual statement required to be made in the petition, of the identity of the deceased or of the party applying for the grant.

115. No person, who renounces probate of a Will or Letters of Administration of the property of a

deceased person in one character, shall without the leave of a Judge, take out representation to the same deceased in the another character.

116. In all applications by a creditor for letters of administration, it shall be stated particularly how the debt arose and whether the applicant has any and what security for the debt.

117. Where the application for probate is not verified by more than one witness to the Will in the manner prescribed by Section 281 of the Act XXXIX of 1925, the application shall be accompanied by a further affidavit setting forth the mode in which the alleged Will was attested and that the requirements of Section 63 of Act XXXIX of 1925 were complied with.

118. Where a Will contains a reference to any paper, memorandum, or other documents of such a nature as to raise a question whether it ought not to form a constituent part of the Will, such paper, memorandum or other document shall be produced in order to show whether it is entitled to probate and where not produced, its non-production must be accounted for. No paper, memorandum, or other document can form part of a Will unless it was in existence at the time when the Will was executed.

119. On an application for Letters of Administration, unless otherwise ordered, a citation shall be issued to all persons having a right to take the grant prior or equal to that of the applicant, unless such persons have signified their consent to the application, and if so directed, a general citation shall be issued to all persons claiming to have any interest in the estate of the deceased.

120. Where Letter of Administration are applied for by a creditor, a special citation shall be issued to the widow, if any, and to the next-of-kin, provided they shall be resident within the jurisdiction of the Court or have any known agent or agents residing within such jurisdiction and to the Administrator- General of Jharkhand and a general citation shall be issued to all persons claiming to have any interest in the estate of the deceased.

121. Under ordinary circumstances the date fixed for the hearing of the application for Probate or Letters of Administration shall not be earlier than fourteen days from the date of despatch of the valuation statements.

122. Every person to whom a grant of Letters of Administration, other than a grant under Section 241 of the Indian Succession Act, 1925, is committed, shall give a bond to and in the name of the Chief Justice with one or more sufficient sureties to be approved by the Registrar General. Such bond shall in all cases be prepared in the office of the Registrar General in the prescribed form and shall, unless otherwise ordered by the Court, be given for the full value of the property of which the grant is to be made.

123. With every certificate sent to a High Court, under the provisions of Section 274 of the Indian Succession Act, 1925, or Section 24 of the Administrator General's Act, 1963, the Registrar General shall send a copy of so much of the schedule of the property and credits of the deceased as relates to the estate within the jurisdiction of such Court.

124. Only the grant, and the Will, if any, shall be copied in the register. Where the Will is in any vernacular or foreign language, the official translation only shall be copied.

125. An exemplification or official copy under the signature of the Registrar General and the seal of the Court, of a grant so entered in register, or of a Will in respect of which a grant has been issued, may be obtained on payment of the prescribed fees.

126. Any person intending to oppose the issue of a grant of Probate or Letters of Administration must either personally or by his pleader file a caveat before the Registrar General. Notice of the filing of the caveat shall be given by the Registrar General to the petitioner or his pleader in the prescribed form.

127. Where a caveat is entered after an application has been made for a grant of Probate or Letters of Administration with or without the Will annexed, the affidavit or affidavits in support shall be filed within eight days of the caveat being lodged, notwithstanding the long vacation. Such affidavit shall state the right and interest of the caveator, and the grounds of the objections to the application.

128. Where an application for grant of Probate or Letters of Administration with or without the Will annexed is presented after a caveat has been filed, the Registrar General shall forthwith issue notice to the

caveator, calling upon him to file his affidavit or affidavits in support of his caveat within eight days from the service of such notice.

129. Where the caveator fails to file an affidavit in support of his caveat in compliance with Rule 127 or in compliance with the notice issued under Rule 128 the caveat may be discharged by the Court.

130. Upon the affidavit in support of the caveat being filed (notice whereof shall immediately be given by the caveator to the petitioner), the proceedings shall be numbered as a suit in which the petitioner for Probate or Letters of Administration shall be the plaintiff, and the caveator shall be the defendant, the petition for Probate of Letters of Administration being registered as and deemed a plaint filed against the caveator, and the affidavit filed by the caveator being treated as his written statement in the suit. The procedure in such suit shall, as nearly as may be, be according to the provisions of the Code of Civil Procedure.

131. The party opposing a Will may, with his affidavit, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law, and only intends to cross examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so, and shall not in any event, be liable to pay the costs of the other side, unless the Court is of opinion that there was no reasonable ground for opposing the Will.

132. The Court may, on the application of the petitioner, before making the order mentioned in Rule 130, direct the trial of an issue as to the caveator's interest. Where, upon the trial of such issue, it appears that the caveator has no interest, the Court shall order the caveat to be discharged, and may order the issue of Probate or Letters of Administration, as the case may be.

133. Where the gross value of the estate as shown in the affidavit of valuation does not exceed Rs. 2,000 no court-fee other than court-fee under Article 11, Schedule 1 of the Court Fees Act on an estate the net value of which exceeds Rs. 2,000, shall be charged, provided the petitioner undertakes to pay the Court-fee leviable to the Government or other party entitled thereto, in case the estate shall thereafter be found to be of greater gross value than Rs. 2,000.

134. The Court may, on the application of the Advocate-General or of any person claiming to be entitled to the fees payable under an undertaking given in accordance with Rule 133, call upon the executor or administrator liable under the undertaking, to pay such fees, and upon the hearing of the application, discharge the same, or make an order absolute for the payment of such fees, together with such order touching the costs of the application as it shall see fit, and every such order shall be enforceable in the same manner as any other order of Court whereby any party is directed to pay money or costs.

135. In cases not provided for by this Chapter, or by the rules of procedure laid down in the Indian Succession Act, 1925, or the Administrator General's Act, 1963, or the Code of Civil Procedure, the practice and procedure of the Probate Division of the High Court of Justice in England shall be followed so far as they are applicable and not inconsistent with this Chapter and the said Acts.

136. Wherever a grant of Probate or Letters of Administration is made and it appears from the application or is otherwise brought to the notice of the Court, or the Registrar General, that any revenue-paying estate or share of such estate is included in the estate of the deceased in respect of which the grant is made, the Registrar General shall notify the grant to the Collector of the district in which such estate or part of an estate is situated.

137. Nothing in the rules in this Chapter shall apply to applications or acts to be done by the Administrator-General, in so far as they conflict with the provisions of the Administrator-General's Act.

138. The inventory and account to be furnished by an executor or administrator under Section 317 of Act XXXIX of 1925 shall be in the prescribed forms and shall be verified by affidavit in the manner following :—

“I.....The executor (or administrator) named in the above inventory do thereby solemnly declare that the said inventory is in every respect, true, perfect and correct to the best of my knowledge, information and belief, and that the same contains a full true and perfect inventory of all the property in the possession of the

deceased.....at the date of his death, and of all credits owing to him, and of all debts owing by him.”

“I.....the executor (or administrator) named in the above account do hereby solemnly declare that the said account is true, perfect and correct to the best of my knowledge, information and belief, and that it gives a full, true and perfect account of all the estate and effect of the deceased.... which has or have come into my hands, possession, power, control, custody or knowledge and of the disposition of the same.”

CHAPTER XV

PROCEDURE IN CRIMINAL CASES

(A) General

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [139. (1) Every memorandum of appeal and every application for revision shall immediately below the title have endorsed on it “Criminal Revision” “Cr.M.P.”, or “Criminal Appeal”, as the case may be, and shall state—

- (a) the name and address of each appellant or applicant;
 - (b) the name and address of each person who is proposed to be made respondent,
 - (c) the provision of the Code of Criminal Procedure under which the appeal or application is sought to be presented;
 - (d) facts of the case in brief;
 - (e) ground or grounds numbered serially;
 - (f) the case number and date of order or judgment appealed against, and all other particulars of the case including the name of the Presiding Officer of the Court below;
 - (g) a certificate should be given in “para-2” of the petitions filed before the High Court stating therein whether the applicant or appellant earlier moved before the Court for same relief;
 - (h) relief prayed for;
- (2) Every such appeal or application shall be accompanied by certified copy of the Order appealed against and as many spare copies as are required. Provided that the provisions of this Rule, shall not apply to a petition of appeal or an application made by an accused in duress.]

140. (i) In the case of a Revision Petition under Sections 397 or 401 or in the case of a petition under Section 482 of the Code of Criminal Procedure the applicant shall state whether an application on the same facts and against the same order or judgment had been previously filed before this Court on behalf of all or any of the petitioners and if so, with what result.

(ii) Every application for Revision under Section 397 of the Code of Criminal Procedure shall state that none of the petitioners to the application has filed any application under that section to the Sessions Judge against the same order or judgment against which the application is sought to be filed.

141. In an appeal against conviction no application or motion for bail shall be heard for admission unless the accused has surrendered to the order of the Court below convicting him to a sentence of imprisonment for a term and an intimation to this effect has been filed except in case where the appellant has been released on bail by the trial Court.

142. No application for admission to bail or any application for interim relief shall be made without notice in writing given to the Advocate General not later than noon of the day preceding that on which the application is to be made.

(B) Reference in Capital Cases

143. When a proceeding is submitted to the High Court under Section 366 of the Code of Criminal Procedure, the Registrar General shall cause the record to be examined and have it entered in the prescribed register.

144. If the record is in order, the Registrar General shall fix a date of hearing of the reference which shall not be before the expiry of the period of limitation for filing appeal and shall at once cause a paper-book to be prepared.

145. The paper-book shall contain the following papers :

- (a) Police Challan;
- (b) First Information Report, if any;
- (c) Magistrate's charge with list of witnesses, if any;
- (d) Statement under Section 164, if any;
- (e) Examination under Section 281 and 313, if any;
- (f) Ground for commitment, if any;
- (g) Record of evidence in the Court of Sessions with any further examination under Section 281 and altered charge, if any;
- (h) Judgment of Sessions Court;
- (i) Material documentary evidence, if any;
- (j) Petition of appeal, if any;
- (k) Order-sheet and the list of exhibits.

146. Six typed copies of paper-book shall be prepared and immediately on receipt of the paper-book the Registrar General shall cause one copy to be sent to the Advocate-General and one copy to the Accused's Advocate, the remaining 4 copies shall be retained for the use of the Court.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [146-A.** When a case has been disposed of, the record shall be returned by the Court Master to the concerned Assistant along with a formal order in the prescribed form duly signed by the Judges who shall without waiting for the judgment, send a copy of the same to the Court concerned.]

147. Any order passed by the Court under Sections 368, 415 or 416 of the Code of Criminal Procedure shall be forwarded forthwith to the Court concerned and a copy thereof shall also be sent to the Superintendent of Jail where the accused is lodged.

(C) Criminal Appeal by Accused against Conviction

148. (1) Jail Appeals may be received by post. In the case of such appeals, after the office has reported that it is within time and is admissible, the Registrar General shall submit it with a copy of judgment or order appealed against to a Bench for orders :

(2) Other Criminal Appeals may be filed in the manner prescribed for filing such appeals in normal course.

149. If the appeal is admitted it shall be dealt with in the manner prescribed for appeals which are filed in the open Court.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [149-A.** As soon as the notices have been issued, the Registrar shall cause paper book to be prepared.

149-B. The paper book shall contain,—

- (a) the petition of appeal;
- (b) the judgment appealed against;
- (c) any other petition or affidavit which may be filed and ordered by the Bench to be considered at the time of hearing of the appeal.

149-C. Upon receipt of the records, the Registrar shall cause paper-book of the Lower Court record to be prepared.

149-D. The paper book shall contain :—

- (i) First Information Report;
- (ii) Charge;

- (iii) Oral evidence;
- (iv) Dying Declaration, if any;
- (v) Post-Mortem Report/Inquest report, in any;
- (vi) Confession, if any;
- (vii) List of Exhibits;
- (viii) Statements of the accused who has made some positive statement;
- (ix) Judgment of the Trial Court;
- (x) Such other document as may be ordered to be included in the paper book by the Court at the time of admission of the appeal or thereafter.]

(D) Appeal against Acquittal

150. The State or the Central Government, as the case may be, may present appeal against any original or appellate order of acquittal after the Court grants leave on petition presented in the manner hereinafter provided, if any such leave is required.

151. In case of an order of acquittal passed in any case instituted on complaint, the complainant may present an appeal to the Court if the Court grants special leave to appeal on an application made in the manner hereinafter provided.

152. All Acquittal Appeals shall be listed before the Division Bench for Admission, and if admitted, shall be processed for hearing. The record of the Court below shall immediately be sent for.

153. On receipt of the records from the Lower Court, the Registrar General shall cause six typed copies of paper-books at the cost of the Court to be prepared in Division Bench cases only. Such paper-books shall be prepared in accordance with Procedure prescribed in this Chapter.

154. Notwithstanding anything contained in these Rules in all cases in the High Court, paper-book shall be typed, or cyclostyled, or printed except where otherwise ordered by the Court/Registrar General.

155. In the case of an appeal under Section 378, sub-section (1) or sub-section (2) of the Code of Criminal Procedure, the Registrar General shall ascertain whether the accused desires assistance, and if so, he shall assist him in the appointment of an Advocate on his behalf.

(E) Other Appeals provided in Cr PC

156. The provision contained in Part D of this Chapter shall apply as far as possible in cases of appeal under Section 341 and 351, Cr PC.

157. The provision contained in Part H of this Chapter shall apply as far as possible in cases of appeals under Sections 86, 449 and 454, Cr PC.

(F) Criminal Revision

158. Cases in revision may be taken up in one or more of the following ways :—

- (a) upon a petition presented in the Court in normal course;
- (b) upon a petition received from jail, if the Court is satisfied that the accused has no next friend or relation to file petition in the Court in normal course;
- (c) upon an order by a Judge on perusal of a sessions statement;
- (d) upon an order by a Judge on examination of periodical returns; or
- (e) during the course of an Inspection of a Court.

159. In the case of Revision under Sections 397 and 401 of the Code of Criminal Procedure, 1973, arising out of conviction and sentence of imprisonment, the petitioner shall state whether the petition shall be accompanied by a certified copy of the relevant order. If he has not surrendered the petition shall be accompanied by an application seeking leave to surrender within a specified period. On sufficient cause being shown, the Bench may grant such time and on such conditions as it thinks fit and proper. No such revision shall be posted for admission unless the petitioner has surrendered to custody in the concerned Court”.

COMMENTS

Validity of.—Whether contrary to Section 389(3), Cr PC—Held—Neither arbitrary nor discriminatory

or illegal—Not violative of any statutory Act. [Mahadeo Prasad Shrivastava v. High Court of Jharkhand, 2005 (1) JCR 394 (Jhr): 2004 (2) JCJR 150 (Jhr)].

Revision against conviction and sentence.—Exemption sought from surrendering in the Court below before revision is taken for admission before High Court—Whether could be allowed ?—Rule 159 envisaged surrender before the revision is taken up. No exemption from surrendering in the Court below could be exempted. [Sahaju Mahto & Anr. v. State of Jharkhand & Anr., 2005 (3) JCR 498 (Jhr) : 2005 (2) East Cr C 463 (Jhr)].

160. When a Revision has been admitted and Court directs issue of notice the Registrar General shall fix a date of hearing and cause notice to be issued in the prescribed form.

161. Except as provided by the rules of this Chapter no paper- book shall be prepared in any Criminal Revision.

162. In the case of Revision when notice has been given to the accused to show cause why the order passed should not be set aside and sentence of death be passed, the Registrar General shall take steps to ascertain whether the accused has funds to employ his own pleader and if necessary shall at the earliest possible stage obtain orders of the Chief Justice for appointment of pleader for the accused.

(G) Criminal Reference

163. (1) As soon as reference under Section 395, Cr PC is received the Registrar General shall cause it to be registered and place before the Court for admission, the Court shall thereafter dispose of the Reference in such manner as it deem appropriate, following procedure laid down in these Rules.

(2) If the Court is of opinion that the point referred to in the case is of substantial importance, it may refer the case for hearing by a larger Bench.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [(3) The paper book shall contain :

- (a) The letter making report;
- (b) Order-sheet of the High Court;
- (c) A copy of the report;
- (d) The explanation of Magistrate, if any.

(4) After the case has been disposed of, a copy of judgment shall be sent to the Court concerned by which the reference was made.]

(H) Criminal Miscellaneous

****Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [**164.** (1) No application for grant of anticipatory bail or regular bail under any provision of law shall lie unless a notice in advance has been served upon the Advocate General or some other officer appointed in this behalf at least 24 hours before the time of filing.

(2) Bail Orders passed by the High Court shall be sent directly to the Courts concerned. The amount of bail, number of and nature of sureties, etc., may be ordinarily indicated therein. A copy of the order shall also be forwarded to the Sessions Judge or the Chief Judicial Magistrate as the case may be who shall send the same forthwith to the Magistrate concerned or his successor in office or the Magistrate placed in charge of his duties for necessary action. When there happens to be only one Magistrate such as in any Sub-divisional headquarters and he is transferred, then in that case it may be sent to the Sub- Divisional Judicial Magistrate for compliance of the order.]

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [**“K-Custody of Record in Cr. Cases”**

164-A(i). Immediately on the receipt, in the office of the Court, of a record in criminal case the Diarist shall examine the condition of the cover and shall make a note thereon and get the record signed and dated by an officer of the Court and shall forthwith deliver such record to the Receiving Assistants who shall at once examine the same and make a note stating that the record is perfect or defective as the case may be and if defective the particular or particulars in which it is defective.

(ii) If on such examination it is ascertained that any paper is missing from the record or is mutilated, or that the record is in any other respect defective, the Receiving Assistant shall forthwith report the fact to the Registrar.

(iii) At the conclusion of any case brought before the Court in the exercise of its ordinary/original Criminal Jurisdiction the entire records of Committing Court, inclusive of such police papers as have been used at the trial and form part of the record shall be consigned to the Criminal Record Room of the Court.

(iv) At the conclusion of the case the Assistant incharge of Disposal Section shall satisfy himself that the entire record has been made over to him by the Court Master and will be held responsible for its subsequent deposit in the Criminal Record Room.]

CHAPTER XVI

PROCEDURE IN CASES UNDER CONSTITUTION

OF INDIA AND SPECIAL ACTS

A : Rule for Disposal of Applications under Articles 226 and 227 of the Constitution of India

165. An application for a direction, order or writ under Article 226 of the Constitution shall state the names, description and addresses of the applicant and the party against whom the relief is sought, the relief sought and the grounds upon which it is sought and be supported by an affidavit by the petitioner or by one of the petitioners or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case as specified in sub-rule (1) of Rule 15 of Order VI of the Code. It shall also state whether an application on the same facts had been previously filed before this Court, and if so, with what result.

166. Every application under Articles 226 and 227 of the Constitution for quashing of the investigation with prayer for stay of arrest during the pendency of such writ application, or for grant of bail or anticipatory bail shall state whether bail or anticipatory bail has been granted or refused earlier in a case, and if so, shall state the number of the case, the date of disposal and result thereof.

167. An application under Article 226 should be drafted, typed, affidavited and filed as prescribed in Chapters VII and VIII.

168. The averments made in the application should (generally) be supported by proof, or evidence(s), enclosed as Annexure(s) to the writ petition. It should contain a Synopsis of the case and relevant dates and events in chronological order.

169. (1) Where any interim relief/order is sought, such as stay, injunction, etc., such prayer should be made specifically in the writ petition, in a separate numbered paragraph of the prayer portion.

(2) A separate application (I.A.) may also be filed for the aforesaid purpose.

170. (1) If any direction, order or writ is sought against Union of India, the State of Jharkhand, any other State, a public officer acting or purporting to act in discharge of his official duties, or against any other Authority, as is covered by Article 12 of the Constitution, notice of the application with all annexures, shall be served on the Advocate-General or, in the case of any department, or officer of any department of the Union of India, having a retained counsel, upon him or if no such respondent has any such counsel, upon the party concerned directly, at least 48 hours before filing.

(2) If in such a case any petitioner seeks any interim relief or any stay of operation or execution of any order or any demand, the serving of such notice shall be a mandatory requirement and in the absence of such requirement being complied with, the Court shall not consider any such request or prayer for any interim relief or for stay.

Provided however, that in emergent cases where the Court is satisfied that the purpose of granting stay or the filing of the petition will be frustrated or that the matter does not warrant any delay, the Court may

dispense with the requirement of such advance notice under this rule on such terms as it thinks fit.

171. An answer to the rule nisi or the notice to show cause, if issued by the Court on entertaining an application as above mentioned, shall except with the leave of the Court, be made by filing an affidavit and by serving a copy thereof along with the copy of annexure, if any, upon the applicant or his Advocate on record, as the case may be, not later than the date fixed for showing cause :

Provided that an answer showing cause filed beyond the period prescribed by this Rule shall be placed for orders before the Bench at the time of hearing of the application and the Bench may pass such order on the affidavit as it thinks fit :

Provided further that if notice of the writ application is accepted in Court and a date is fixed for hearing with consent of the parties without issuing formal notice, an answer showing cause must be made by filing an affidavit and by serving a copy thereof with annexures, if any, upon the Advocate on record for the applicant not later than twenty-four hours before the date fixed for hearing.

172. All applications, affidavits, answers showing cause and affidavits in reply along with the annexures, if any, filed by any party, shall be in duplicate and typed legibly in double space. Before the case is put up for hearing, the Court office shall prefix a table of contents with reference to the page numbers of the papers or record :

Provided that if papers are filed during the course of hearing the parties shall prefix as table of contents giving serial page numbers in continuation of the pages mentioned in the original table of contents.

173. These rules shall also apply mutatis mutandis to applications under Article 227 of the Constitution.

B : Rules for Appeals under Clause 10 of the Letters Patent.

174. (1) Every appeal to the Court under Clause 10 of the Letters Patent from a judgment of one Judge of the Court shall be presented at the Centralised Filing Counter within thirty days from the date of the judgment appealed from. The Designated Officer shall endorse on the memorandum the date of presentation and after satisfying himself that the appeal is in order and is within time shall cause it to be laid before a Bench for orders at an early date. It shall be accompanied by a certified copy of judgment appealed against.

(2) If an appeal under this rule is filed beyond the period of 30 days, the delay in filing the appeal may be condoned subject to the appellant showing sufficient cause and offering explanation as to the reasons of delay by filing a separate application (I.A.) for this purpose duly supported by an affidavit.

COMMENT

Letters Patent Appeal—Disposal of.—Where the judgment of the Single Judge stands implemented by the respondents, the appeal would become infructuous. [M/s. Bharat Coking Coal Ltd. v. M/s. Jai Maa Verma Fuels, 2002 (3) JCR 141].

175. A Letters Patent Appeal arising out of the decision of a Single Judge shall consist of the following papers :

(a) Memorandum of the Letters Patent Appeal;

(b) Judgment and/decreed under appeal; and

(c) All such papers and documents as form the record of the Writ Application or other proceedings before the learned Single Judge and before the Court lower than that, on which the appellants seeks reliance, or proposes to make reference.

COMMENT

Letters Patent Appeal—Maintainability of.—Appeal filed with order appealed against without enclosing other papers forming part of the writ proceedings—Rule mandatory—Non-compliance of the rule to result in adverse orders being passed against the appellant—Rule being of mandatory application, non-compliance thereof would always result in adverse orders being passed against the appellant. [Nishi Kant Jha v. State of Jharkhand, 2001 (3) JCR 577 (Jhr)].

176. (1) Where any interim relief/order is sought, such as stay, injunction etc., such prayer should be made specifically in the memorandum of the Letters Patent Appeal, in a separate numbered paragraph in the

prayer portion.

(2) A separate application (I.A.) may also be filed for the aforesaid purpose.

177. Procedure for filing L.P.As, the format on which these should be drafted and the particulars required to be mentioned, shall be such as is prescribed and laid down in Chapters VII and VIII.

C : Procedure relating to Applications and References under Section 256 and Appeals under Section 260-A of the Indian Income Tax Act, 1961 (No. XLIII of 1961)

178. References and applications under Section 256 of the Act shall be posted before such Bench of two Judges as the Chief Justice may specify.

179. The statement of the case by the Tribunal under sub-section (1) of Section 256 of the Act shall be accompanied by, as annexures thereto, copies of :—

- (i) the assessment order;
- (ii) the appellate order;
- (iii) the order of the Tribunal under Section 254(1);
- (iv) the application of the assessee or of the Commissioner, as the case may be, requiring the Tribunal to state a case to the High Court under sub-section (1) of Section 256; and
- (v) any other relevant paper or papers which the Tribunal may consider relevant for the disposal of the application.

****Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [180.** The statement of the case shall be in the form of numbered paragraphs setting out all the relevant facts and proceedings in their chronological order, next the contentions of the parties in relation to the question or questions referred, next the finding of fact and law of the Appellate Tribunal thereon and lastly the question or questions of law arising therefrom and referred. It must not contain any discussion of questions asked, to be referred, but not referred.]

181. The Appellate Tribunal, when submitting a statement of the case to the Court, shall forthwith give notice thereon to the parties at whose instance the reference has been made.

182. Applications under sub-section (2) of Section 256 of the Act shall be accompanied by, as annexures thereto, copies of—

- (i) the order of the Income Tax Officer;
- (ii) the order of the Appellate Assistant Commissioner;
- (iii) the order of the Appellate Tribunal passed in the case under Section 254(1);
- (iv) the application of the assessee or of the Commissioner, as the case may be, requiring the Tribunal to state a case to the High Court under sub-section (1) of Section 256;
- (v) the order of the Tribunal refusing to state a case and make a reference under sub-section (1) of Section 256;
- (vi) any other paper or document which the applicant considers necessary for the disposal of the application; and
- (vii) where the application is filed by an assessee, a certificate in original from the Appellate Tribunal to the effect that the assessee has not withdrawn his application for reference under sub-section (3) of Section 256 of the Act before the said Tribunal.

183. After the application under sub-section (2) of Section 256 of the Act is admitted and after the receipt of reference under sub-section (1) of Section 256 notice will be served on the parties giving information regarding the preparation of paper- books.

184. The paper-book in the case of reference under sub- section (1) of Section 256 shall contain the papers mentioned in Rule 179 and all other relevant papers.

185. The paper-book in case of application under sub-section (2) of Section 256 shall contain the papers mentioned in Rule 182 and also the following papers :—

- (i) the application of the assessee, or the Commissioner, as the case may be, to the High Court under sub-section (2) of Section 256;

- (ii) the order of the High Court requiring the Tribunal to state a case;
- (iii) the statement of the case by the Tribunal under sub-section (2) of Section 256.

186. The cost of preparation of paper-book shall be deposited by the party seeking the reference within the time fixed by the Court which will be treated as cost of reference.

In case of default in making payment of the printing cost as aforesaid the case should be laid before the Bench for such orders as it deems fit.

187. After delivery of the Judgment a copy thereof shall be sent under the seal of the Court and the signature of the Registrar General to the Appellate Tribunal, as required by sub-section (1) of Section 260 of the Act.

D : Procedure relating to the Applications and References under Section 64 of the Estate Duty Act, 1953 (Act XXXIV of 1953), Section 27 of the Wealth Tax Act, 1957 (Act XXVII of 1957), Section 130 of the Customs Act, 1962, Section 35-G of the Central Excise Act, 1944 Section 82-B of the Gold (Control) Act, 1968 and Section 28 of the Bihar Agricultural Income Tax Act, 1948.

188. The Rules of this Chapter regulating the procedure for the conduct and disposal of application under Section 256 and appeals under Section 260-A of the Income Tax Act, 1961 shall apply mutatis mutandis to the proceedings under Section 64 of the Estate Duty Act, 1953 (Act XXXIV of 1953), Section 27 of the Wealth Tax Act, 1957 (Act XXVII of 1957), Section 130 of the Customs Act, 1962, Section 35-G of the Central Excise Act, 1944, Section 82-B of the Gold (Control) Act, 1968 and Section 28 of the Bihar Agricultural Income Tax Act, 1948 with such modifications and adaptations as the Chief Justice may prescribe.

CHAPTER XVII

PREPARATION OF PAPER BOOKS

A : General

189. In all matters to be heard by Division Bench or Larger Benches, it shall be mandatory that paper books are filed before the hearing starts. The filing of paper books being compulsory, no matter before a Division Bench or larger Bench shall be heard without the paper books;

Provided that in rare and exceptional cases, the Bench seized of a matter may dispense with the requirement of filing the paper book.

190. All paper books, unless there is any order to the contrary passed by the Court, or the Registrar General, shall be prepared by the appellant/petitioner.

Provided that a respondent within 30 days after service upon him of the notice, or, with the permission of the Court or the Registrar General, may file another set of paper books enclosing papers, other than those inserted in the paper book of the appellant/petitioner to which such respondent desires that a reference shall be made by the Court at the hearing of the appeal.

Explanation.—The paper-book means and includes the whole of the papers included in the Appellant's and Respondent's paper books.

191. All the paper books shall be neatly typed, or printed and shall conform with the following requirements :—

(a) The size shall be 32 by 64 cms. of fullscap folio.

(b) The type used in text shall be pica modern, solid, with italics where necessary, but long primer shall be used in printing accounts, tabular matter and notes.

(c) Every tenth line on each page shall be numbered, i.e. the tenth line shall be numbered 10, the 20th line 20 and so on.

192. (1) In all paper books, unless there is an order to the contrary of the Court or the Registrar

General whether prepared by the office of the Court or by the parties, papers in Hindi in Devanagari or Kaithi script shall be printed or typed, as the case may be, in Hindi in Devanagari script. Paper in Urdu shall be in Hindi in Devanagari script and then included in the paper books. Paper in vernacular other than Hindi and Urdu shall be translated in English before being included in the paper books.

Provided that if at the time of hearing or even before, it is considered necessary to have all or any of the vernacular papers in the paper books, translated into English the required translation and their typing shall be done in the office of the Court and the cost thereof, both the translation and typing, shall, unless otherwise directed by the Court, be borne by the party at whose instance the paper has been included in paper books.

(2) The paper-books shall consist of three parts. Part I shall contain pleadings and depositions of witness, issues framed, judgments, decrees and miscellaneous papers, if any, of the trial Court. Part II shall contain the record of proceedings in the High Court and Part III shall contain the exhibits and documents. Documents in Parts I and II shall be in chronological order. The headings of the Hindi documents will be in Hindi. To every paper- book and if it is in more than one volume, to each volume, shall be prefixed a table of contents in English with references to pages. The table of contents of Part III shall follow the order of exhibit marks and shall be arranged as far as possible in chronological order, each document showing its, exhibit mark and whether it is a plaintiff's or defendant's document and in all cases document relating to the same matter, such as (a) a series of correspondence, or (b) proceeding in a suit other than the one under appeal, shall be kept together.

193. Every paper book shall have attached to it a fly leaf in the prescribed form.

194. The paper book shall contain the following papers/documents :—

- (i) Memorandum of Appeal;
- (ii) All the pleadings of all the parties in the Courts below;
- (ii) Issues and documents in the Courts below, if any;
- (iv) Evidence of the parties, deposition as well as documentary;
- (v) Copies of the Judgments and decrees of the Courts below and all other orders as are relevant and the material for the disposal of the Appeal.

Explanation.—The paper-books filed in the Letters Patent Appeal shall always contain all the papers as were in the proceedings before the learned Single Judge.

195. In respect of the paper-books to be prepared by the Court where either of the parties would be required to defray the costs, the Registrar General from time to time shall notify the cost structure in respect of the paper books which shall always be paid by the parties accordingly.

196. Such number of copies of paper-books shall be filed in every case as would meet the requirement of the Bench as well as the parties.

197. All pages of paper-books shall be true copies of their originals and a certificate of the Advocate to that effect shall always be appended in the Paper-Book at its beginning.

198. In case of failure of the party responsible for filing paper-book, the matter shall be listed before the Bench for final orders and the Bench may pass appropriate orders.

199. Any party will be always at liberty to apply for making any corrections in the paper-books or for filing supplementary paper- books.

CHAPTER XVIII APPEALS AND APPLICATIONS FOR REVIEW AND REVISION ETC.

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [200. Every memorandum of appeal

and every application for review or revision shall immediately below the title have endorsed on it "First Appeal", "Second Appeal", "Review" or "Revision" as the case may be, and shall state :—

(a) the name and address of each appellant or applicant;

(b) the name and address of each person whom it is proposed to make a respondent;

Note :—Address in (a) and (b) includes name of thana and post office.

(c) the Court in which, and the name of the Judge or Munsif by whom the decree or order objected to was made;

(d) the date when and the number of the case in which such decree or order was made;

(e) the description of the parties to the appeal or application as to whether such parties were plaintiffs, defendants or applicants in the Court of first instance;

(f) the ground or grounds numbered seriatim of objection to the decree, order or judgment;

(g) the relief sought by such appeal, review or revision;

(h) the value of the appeal, and in the case of an application for revision, the value of the suit out of which the application arises :

Provided that in every case in which an appeal or cross objection is preferred to this Court and the valuation, for the purposes of Court Fee or the Court Fee paid, varies from that of the trial Court, in the case of First Appeals, or from that of either the Trial Court or the Lower Appellate Court, in the case of Second Appeals, the Advocate shall, at the time of filing the appeal, add below the valuation in the memorandum of appeal a short explanatory note setting forth the reasons for the variation giving if necessary reference to the certified copies of the judgment and decree, and mentioning the relevant pages thereof, which are filed with the memorandum of appeal. Any omission to file this note shall be forthwith reported to the Registrar General who may direct that the note be filed within a specified period according to the circumstances of each case or direct that the matter be laid before a Bench;

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

(ii) in case of Civil Revision under Section 115, CPC and Section 25 of the Provincial Small Cause Court Act, 1887, the applicant shall state whether an application on the same fact and against the same order or judgment had been previously filed before this Court on behalf of all or any of the petitioner and if so with what result.]

201. When two or more cases are tried together and decided by the same judgment and two or more appeals are filed against such judgment, whether by the same or different appellants, the Registrar General may in his discretion, and if satisfied that the questions for decision are analogous in each appeal, dispense with the production of more than one copy of the judgment.

Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [201-A(i).** A memorandum of appeal 1 [from original decree] or application for revision of an appellate decree or order shall be accompanied by copies of the judgments of both the Lower Courts and if filed by an Advocate shall bear a certificate under his hand that in his opinion each of the grounds taken in the appeal or application is a good ground for appeal or for revision.

A(ii). When an appeal from original decree or application is not accompanied by the necessary copies of judgments the Registrar may allow time for production of the same. If copies are not produced within the time allowed, the appeal or application shall be laid before the Court for orders.

A(iii). Every memorandum of an appeal the ground of which is that there is in fact on the record no evidence or admission to support the decree shall state sufficiently the material finding in support of which there is no evidence or admission on the record.

A(iv). Every memorandum of appeal from an appellate decree on the ground mentioned in the last preceding rule which is presented by an Advocate shall bear a certificate under his hand that he has examined the record and that in his opinion such ground is well founded.]

202. Every application for review of judgment shall set forth plainly and concisely the grounds on which a review is sought, and shall contain a certificate by a pleader of the Court similar, mutatis mutandis, to that prescribed for appeals from appellate Decrees.

203. Every application for review made upon the ground of the discovery of new and important matter or evidence within the meaning of Order XLVII, Rule 1 shall be accompanied by an affidavit of the applicant or his pleader, stating in clear terms, what such new and important matter or evidence is, the effect or purport thereof and that the same, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed, the order was made or the judgment was delivered.

The document, if any, relied upon shall be annexed to the application.

204. Every memorandum of appeal or application filed in the High Court by or on behalf of a person who claims remission of Court-fee, Process-fee and Vakalatnama-fee in terms of any notification having force of law, shall be accompanied by a petition praying for the remission. The petition shall contain a statement of the material facts on the basis of which the remission is claimed and a certificate granted by the Block Development Officer or the Circle Officer of the area concerned certifying that the petitioner belongs to the Scheduled Caste or the Scheduled Tribe or is landless person or a person whose annual income does not exceed Rs. 5000/- (Rupees Five Thousand); or such revised amount as is notified from time to time by the State Government :

Provided that the Court, if otherwise is satisfied about the existence of the facts on which the claim for remission is based, may dispense with the production of the aforesaid certificate of the Block Development Officer or the Circle Officer.

205. (1) If a memorandum of appeal is not barred by limitation, is sufficiently and properly stamped and complies with the provisions of these Rules and the law relating to the maintainability and filing of such an appeal;

(a) in the case of a First Appeal from a judgment and decree, the Registrar General in the Lawazima Board shall admit the appeal by passing a formal order of admission and direct issuance of notices to the respondents;

(b) all other appeals shall be posted before the appropriate Bench for consideration of admission and passing of appropriate orders.

(2) Any party seeking stay of the execution of the decree in every appeal or for obtaining any other interim relief shall do so by making an appropriate application before the Court and the Court may pass orders on such application. The mere admission of a First Appeal by the Registrar General or the pendency of any appeal in the Court shall not be construed or treated as a stay nor shall it amount to the grant of any interim relief in any form.

206. Every memorandum of appeal or application for which the stamp cannot be ascertained until the receipt of the record, shall, as soon as possible after the receipt of the record, be examined by the Stamp Reporter, who shall then endorse on it his report as to the sufficiency of the stamp and shall send it to the Registrar General for orders.

207. Whenever the Stamp Reporter finds that a document which ought to bear a stamp under the Court Fees Act, 1870, has been through mistake or inadvertence received or filed for use in the Court without being properly stamped, he shall report the fact to the pleader who presented the document. Such pleader shall at once initial the report and shall within three weeks thereafter, or within such further time as the Taxing Officer may allow, note on it whether he accepts or disputes the accuracy thereof. If such note is not made within such time, it shall not be open to such pleader to dispute the accuracy of the report.

The Registrar General of the High Court shall be the Taxing Officer within the meaning of Section 5 of the Court Fees Act, 1870 (VII of 1870).

208. Even if any appeal or a petition for revision has been admitted by the Court or notice thereof has been ordered to be issued by the Court to the opposite parties, the record of the Court below shall not be sent

for or requisitioned unless the Court directs this to be done.

PART III

ADVOCATES AND ADVOCATE'S CLERKS

CHAPTER XIX

ADVOCATES

209. No Advocate shall be allowed to appear in the Court without the assistance of an Advocate-on-Record in any case :

Provided that in such cases where the Court appoints an amicus curiae, this condition shall not be applicable.

NOTIFICATION

No. 131A, dated 5th September, 2001. **Published in Jharkhand Gazette Extraordinary No. 210, dated 6th September, 2001. —In exercise of the powers conferred by Section 29 of the Bihar Reorganisation Act, 2000 (Act XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby put Rule 209 of High Court of Jharkhand Rules, 2001 in abeyance and suspending its operation for the time being.

A : Senior Advocates

210. (1) The Court may, with the consent of an Advocate either upon a written proposal made by a Senior Advocate or at the suggestion of any Judge of the Court, designate an Advocate as a Senior Advocate in terms of Section 16(2) of the Advocates Act, 1961, if in the opinion of the Court, by virtue of his ability, experience and standing at the Bar, the said Advocate is deserving of such a distinction;

Provided that any Advocate who has put in less than 15 years practice at the Bar and ordinarily does not reside in and practice in Jharkhand High Court, shall not be designated as a Senior Advocate under this Rule.

(2) The Court may, from time to time, frame policy guidelines for carrying into effect the provisions contained in this Rule. Such guidelines may even prescribe, by way of modification the minimum years of practice or age etc.

211. Upon conferment of the aforesaid distinction on the Advocate, the Registrar General shall notify the same to the Advocate concerned, the President of the High Court Bar Association, the Bar Councils of Jharkhand and India, and the Registrar General of the Supreme Court.

212. A proposal or an application once rejected cannot be renewed for two years.

B : Advocate-on-Record.

No. 107-A, dated the 10th August, 2001, published in Jharkhand Gazette, (Extraordinary)
No. 180, dated August 16, 2001—In exercise of the powers conferred by Section 29 of the Bihar Reorganisation Act, 2000 (ACT XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby put Rules No. 213 to 227 of High Court of Jharkhand Rules, 20001 relating to the provision regarding Advocates-on-record in abeyance and suspending their operations for the time being.

Sd/- Illegible,

Chief Justice

Jharkhand High Court, Ranchi

213. There shall be two categories of Advocates on record, namely :—

(i) Those Advocates who have been enrolled under the Advocates Act, 1961 on or before the date when these Rules come into force and apply for registration as Advocates-on-Record before 31st July, 2001, but without having to pass any examination.

(ii) Those Advocates who are enrolled under the Advocates Act, 1961 on or after the coming into force of these Rules and apply for registration, but have to pass an examination conducted for this purpose by

the High Court in accordance with the Rules hereinbelow mentioned.

Explanation.—Only such persons in either of the aforesaid two categories can be registered as Advocates-on-Record who normally and originally practice in Jharkhand State and have their normal domicile in the Ranchi town.

214. Every person who has been enrolled as an Advocate on or before 15th November, 2000 in the State Bar Council and who applies before 31st July, 2001 for being registered as an Advocate-on-Record, shall ordinarily be granted such a registration unless, in the opinion of the Court, such person is not capable of being registered as an Advocate-on-Record. The refusal to register such a person as an Advocate-on-Record shall be based on an order in writing and communicated to the person concerned by the Registrar General.

215. Those Advocates who have been enrolled in the State Bar Council on or after 15th November, 2000 may apply to the Registrar General for registration as Advocates-on-Record only after they have earned an experience of more than two years at the Bar, atleast for one year out of this period having worked as a junior to an Advocate having more than ten years standing. Every such application shall be accompanied by a certificate from the Advocate concerned that the applicant has worked with him as a junior for more than one year.

216. The High Court may conduct a written examination for admittance of Advocates-on-Record and prescribe syllabus of the papers which the candidates appearing in such examination have to clear.

217. Every person registered as an Advocate-on-Record shall have his office in Ranchi town and furnish an undertaking that within one month of being registered as an Advocate-on-Record, he shall employ a regular whole time clerk duly registered with the High Court.

218. Every application under this Chapter shall be accompanied with a registration fee of Rs. 250.

219. The word “Advocate-on-Record” shall include a partnership firm of Advocates-on-Record.

220. Save as otherwise provided for in any law for the time being in force, no Advocate-on-Record shall be entitled to appear, plead or act for any person in any Court in any proceeding unless he files an appointment in writing signed by such person and also signed by the Advocate-on-Record in token of its acceptance or the Advocate-on-Record files a memorandum of appearance in the form prescribed by the Chief Justice :

Provided that where an Advocate-on-Record has already filed an appointment in any proceeding, it shall be sufficient for another advocate, who is engaged to appear in the proceeding merely for the purpose of pleading to file a memorandum of appearance or to declare before the Court that he appears on instructions from the Advocate-on-Record who has already filed his appointment in the proceedings :

Provided further that nothing herein contained shall apply to an advocate who has been requested by the Court to assist the Court amicus curiae in any case or a proceeding or who has been appointed at the expense of the State to defend an accused person in a criminal proceeding.

Explanation.—A separate appointment or a memorandum of appearance shall be filed in each of the several connected proceedings, notwithstanding that the same Advocate-on-Record is retained for the party in all the connected proceedings.

221. The Court Registry shall maintain an address book of all Advocates-on-Record which may contain their complete particulars of address and telephone numbers. All communications from the Court Registry shall be served upon Advocates-on-Record at such address. It shall be the duty and obligations of the Advocates-on-Record to ensure that any change in address or telephone numbers is intimated to the High Court Registry immediately on it being brought about.

222. In case in which a party is represented by more than one Advocates-on-Record, it shall be necessary for all of them to file a joint appointment or for each of them to file a separate one.

223. The acceptance of an appointment on behalf of a Firm or Partnership of Advocates-on-Record shall be indicated by a partner affixing his own signature as a partner on behalf of the Firm or Partnership of Advocates-on-Record.

224. (i) Any Advocate-on-Record who commits any breach of the terms of registration as contained in these rules or who, in the opinion of the Court, is guilty of such misconduct as unbecoming of an Advocate-on-Record or who has acted to the detriment and prejudice of his client or otherwise, the Court may proceed to suspend or cancel his registration as such Advocate-on-Record for such period or permanently as the Court may deem appropriate, provided that no such order of suspension or cancellation shall be passed by the Court without issuing a show cause notice to the Advocate-on-Record and without affording him an opportunity of being heard.

(ii) Any complaint, information or representation leading to the passing of any order as mentioned in sub-rule (i) shall be placed by the Chief Justice before a Committee of two Judges of the Court who may pass the order as above mentioned.

(iii) In the proceedings before the Committee of two Judges, if the charged Advocate-on-Record desires, or if the Members of the Committee so feel themselves, the Committee may permit the Chairman of the State Bar Council to participate in the proceedings and assist the Committee in arriving at a proper conclusion leading to the passing of appropriate order on the basis of the material as available before the Committee and on the merits of the case.

(iv) The Advocate-on-Record whose licence has been suspended or cancelled under this Rule may prefer an appeal against such an order to the Chief Justice who shall place such an appeal for disposal before a Committee of three Judges of the Court to be constituted by the Chief Justice. If the Advocate-on-Record so desires, the Appeal Committee shall hear him before passing any final order in his appeal.

225. (i) It shall be open to any Advocate-on-Record to have his name deleted from the Register of Advocates-on-Record by merely applying to the Registrar General. The Registrar General on receipt of such an application shall delete the name of such applicant from the Register of Advocates-on-Record.

(ii) Any Advocate-on-Record who has been designated as a Senior Advocate under Section 16(2) of the Advocates Act, 1961 shall cease to be Advocate-on-Record with immediate effect and the Registrar General shall accordingly delete his name from the Register of Advocates-on-Record.

226. No Advocate-on-Record shall be permitted to file an appointment or memorandum of appearance in any proceeding in which another Advocate-on-Record is already on record for the same party save with the written consent of the former Advocate-on-Record or the leave of the Court, unless the former Advocate-on-Record has ceased to practice or has by reason of infirmity of mind or otherwise become unable to continue to act.

227. Every Advocate-on-Record shall keep such books of account as may be necessary to show and distinguish in connection with his practice as an Advocate-on-Record.

228. Advocate appearing before the Court shall wear the following dress.—(1) Advocates other than Lady Advocates :—

(a) a black buttoned-up coat, Chapkan, Achkan or black Sherwani and white bands with Advocates' Gowns; or

(b) a black open breast coat, white shirt, white collar (stiff or soft) and white bands with Advocate's Gowns.

In either case long trousers (white, black or black striped or grey).

(2) Lady Advocates :—

(a) Black and full or half sleeve jacket or blouse, white collar (stiff or soft) with white bands with Advocates' Gowns;

(b) Sarees, long skirts flare; salwar-kameej, Flake or shirt- trousers (white).

**Arrangement of seating or standing of the
counsel in the Court**

229. Counsel for the petitioner/appellant shall stand or take his seat on the right side of the Judge and that of the respondent/opposite-party on the left side.

CHAPTER XX
ADVOCATES CLERK'S RULES

230. In these rules the expression 'authorised clerk' means a clerk employed by an Advocate ordinarily practising in the High Court, and the Courts subordinate thereto, in accordance with the rules and practice of the Court and such instructions as may, from time to time, be issued by the Registrar General of the High Court.

231. An advocate ordinarily practising in the High Court may make an application to the Registrar General in pursuance of these rules, for the registration of a clerk, who, on such registration, shall be known as an 'authorised clerk', for the purpose of transacting business in accordance with these Rules.

No advocate may make an application for registration of more than one authorised clerk save with the express recommendation of the State Bar Council certifying that the Advocate's practice is such that the number of clerks recommended is essential.

232. A register of all authorised clerks shall be maintained in the Registry of the Court, in such manner or is prescribed and to each authorised clerk shall be given a card in the prescribed form. Every authorised clerk while on duty :—

(a) shall wear a long black coat or black Chapkan with a blue band one inch broad on the cuff of the left sleeve.

And

(b) Wear plastic badge measuring 1" x 3" of black colour containing the name of the clerk concerned in white and below the name, description as Advocate's clerk.

233. An Advocate shall at once report to the Registrar General the termination of employment of any authorised clerk, and on termination of his employment a clerk shall immediately return his card, failure to do so would render him liable to such penalty as may be prescribed.

234. No clerk employed by an Advocate shall be allowed to transact any business with, or have access to any of the offices of the Court or the Courts subordinate thereto, unless he is an authorised clerk, and properly dressed as such.

235. It shall be the duty of an Advocate at once to inform the Registrar General of any serious misconduct which comes to his knowledge on the part of his authorised clerk.

When it is alleged that an authorised clerk is guilty of misconduct, the Registrar General may, for reasons to be recorded in writing, and after hearing the clerk in his defence if the latter so desires, order his suspension, or the removal of his name from the register and the cancellation of his card, and on the passing of such order the clerk shall cease to be an authorised clerk.

236. If a person who has been suspended or whose name has been removed from the register is thereafter recommended for registration by any Advocate, the fact of such suspension or removal shall be mentioned in the recommendation.

237. When submitting an application under the foregoing rule, and when it is desired to renew registration, the Advocate shall furnish a certificate to the effect that he knows personally, or has satisfied himself by proper enquiry, that the clerk in question is a person of good character and antecedents; that he is fit to be employed as authorised clerk, and will be employed bona fide and solely (subject to the proviso to Rule 238) in the Advocate's own service and for the purpose of his legal business in accordance with these rules; that his employment is necessary for the Advocate's professional practice and that the advocate will make it a condition of his accepting a brief that remuneration shall be paid to the authorised clerk or clerks in an amount not less than fifteen per cent of the fee paid to the Advocate, subject to a minimum of Rs. 50 in any one case.

In the case of a first application he shall further furnish an undertaking that if it comes to his notice that the clerk is or has been working as a tout he shall at once report the fact to the Registrar General.

238. An authorised clerk shall transact business for remuneration in the offices of the High Court or

Court's subordinate thereto only on behalf of the Advocate whose clerk he is or of the clients of the said Advocate :

Provided that whenever the sole authorised clerk of an Advocate is unavoidably absent from the Court the authorised clerk of any other advocate may work in his place, with the previous consent in each case of the Advocates concerned.

239. The Registrar General may for reasons to be recorded in writing, in his discretion reject any application for the registration or renewal of registration of an authorised clerk.

240. Should it come to the notice of any Advocate or of any officer or assistant of the High Court that any person other than an authorised clerk as hereinbefore defined, is transacting or attempting to transact any business of an authorised clerk within the precincts of the High Court, he shall at once report the fact to the Registrar General who shall take such action as he may deem fit, and may remove such person from the precincts of the Court.

241. An authorised clerk may act in all matters of a routine nature which do not require the personal attendance of the Advocate and shall be allowed to do the following acts on behalf of his master :—

(1) To receive notices, and to obtain forms of notices from the office.

(2) To obtain reports by the Stamp Reporter on civil appeals and application, and by the Trial Clerk on criminal appeals, before their presentation in Court.

(3) To file appeals and applications before the Peshkar of the Bench or Registrar General and to present appeals and applications under Chapter XVII, Part II of the Jharkhand High Court Rules and applications for interlocutory orders to the Deputy Registrar and the Assistant Registrar, as the case may be.

(4) To obtain office reports upon applications.

(5) To present to the Registrar General or Deputy Registrar or in the absence of the Deputy Registrar to the Assistant registrar applications signed by his master for—

(a) Inspection of records and registers.

(b) Return of documents.

(c) Refund of surplus balances at credit.

(d) Inclusion of documents in a paper-book.

(6) To make application for copy under his signature, stating the name of the Advocate and description of the party represented by such Advocate.

(7) To take notes from deficiency reports of the Stamp Reporter and file necessary stamps.

(8) To inspect records with his master, or with another Advocate if his master permits it and is himself empowered to inspect.

(9) To deposit money and file court-fees.

(10) To receive paper-book, copies and the like.

(11) To file Vakalatnamas, retainer slips, certificates of fees, written forms of processes, and copies of papers and briefs.

(12) To identify, if required and in a position to do so, persons making inspection of records or swearing affidavits.

(13) To apply for copies in his own name, stating that the application is being made on behalf of his master to be named.

242. By an administrative order, the Chief Justice may prescribe other conditions relating to the grant of registration to Advocates' Clerk, including the duration or period of such registration, or renewal thereof, and the levy of fees for such registration, if any, as also conditions attached thereto.

FEES AND COSTS

CHAPTER XXI

(A) PROCESS FEES

243. Process fees for serving the parties or executing the processes in respect of the persons sought to be served shall be charged as shown hereinbelow :—

Rs. P.

Article 1. In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document, one fee

5.00

When such persons are more than four in number, then the fee above mentioned, and an additional fee of Re. one for every person in excess of four :

1.00

Provided that in the last-mentioned case where such persons reside in the same or immediately adjacent areas/localities/village, the additional fee may be such sum, not exceeding the amount of the fee prescribed, as the High Court may, in the particular case, determine :

Provided also that in analogous cases, where the appellant is the same but the respondents are different, but residing in the same or immediately adjacent villages, the same rule shall apply.

Article 2. In every case in which personal or substituted service of any process on the persons who are not parties is required, when the number of such persons is not more than four, one fee.

5.00

When there are more than four such persons, then the fee above mentioned for the first four, and additional fee of Rs. one for every one in excess of that number.

1.00

Article 3.—For the execution of a warrant for arrest of the person.

5.00

Article 4. For service or execution of any process is used by the Court, not specified in any preceding article of this part.

5.00

244. Notwithstanding anything in the preceding rule, no fee shall be chargeable for serving or executing—
(i) any processes which may be issued by the Court of its own motion solely for the purpose of taking cognizance of and punishing any act done or word spoken in contempt of its authority;

(ii) any processes issued a second time in consequence of an adjournment made otherwise than at the instance of a party;

(iii) any copy of a summon, notice, proclamation or other process fixed up in Court-House or in office of a Collector;

(iv) any order directing an Officer-in-charge of all jail to detain or release a person committed to his custody.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [Note.—No fee shall be charged for inspection of pending criminal records.]**

245. The fees hereinbefore provided shall be payable in advance at the time when the petition for service or execution is presented and shall be paid by means of Court-fee stamps affixed to the petition in addition to the stamps necessary for its own validity.

246. Except as hereinafter provided, no fee paid in respect of a commission shall be refunded, if the order in respect of which the fee has been paid has been passed.

(B) Other Fees

247. The following fees shall be charged on every application made in respect of the following matters

and such fees shall be paid by means of Court-fee stamps affixed to such application :—

Rs. P.

(1) For every search in the offices, record- rooms, books or registers of the Court.

10.00

(2) On each application for a copy of any document or record in the High Court, whether the copy applied for is of a single document or more documents than one.

2.00

Provided that this does not authorize an applicant to ask in a single application for copies of more than one paper, if required in more than one case. There must be a separate application, and therefore a separate stamp, for each case.

(3) For verifying any petition by solemn affirmation or on Oath, or for swearing or affirming every affidavit, intended to be used in the High Court

5.00

Note 1. The Advocate-General, the Superintendent and Remembrancer of Legal Affairs for the State of Jharkhand and the Law Reporter to Govern- ment are exempted from payment of the searching fees referred to above.

Note 2. Where the fee for swearing or affirming an affidavit has been levied no fees shall be levied for filing the same, provided that this exemption shall not apply to the fee payable in original suits for filing documents, annexed to affidavits.

Note 3.—Fees for taking affidavits or affirmations. Fees to be allowed to the Commissioner for Oaths and Affidavits deputed by the Registrar or the Court for taking affidavit or affirmation at the house of a party or any other place other than the Court House, shall be as follows :

For the first affidavit, oath or affirmation within a distance of 5 k.ms. from the Court House.

20.00

For the first affidavit, oath or affirmation beyond a distance of 5 k.ms. from the Court House.

30.00

For every affidavit, oath or affirmation taken at the same time and place after the first, in the same suit, appeal or matter.

10.00

In no case shall the Commissioner for Oath and Affidavits be allowed, for taking any number of affidavits, oaths and affirmations at the same time and place, more than Rupees one hundred, where such place is within a distance of 5 k.ms. from the Court House, or more than Rupees one hundred fifty, where such place is beyond the said limit.

(4) For inspection of lower Court records received in connection with appeals and cases and disposed of High Court records—

Rs. P.

(i) If the application is by a party to the suit

10.00

(ii) If the application is not by a party to the suit

20.00

(iii) If the application is for immediate inspection by a party to the suit

30.00

Note. No fee shall be charged for inspection of criminal records.

(4) (a) For inspection of pending High Court records :

(i) If the application is for ordinary inspection.....

5.00

(ii) If the application is for urgent inspection.....

10.00

(5) For information

(i) If the suit is pending

5.00

(ii) If the case has been disposed of

10.00

(C) Costs

248. The following scale of costs shall ordinarily be allowed to the successful party in appeals to the High Court :—

(1) Appeals from Decree

Amount or value of the claim, +, Costs

Not exceeding Rs. 2,000, Drawing grounds of Appeal

Hearing fee, Rs. P.

20.00

5 per cent on the valuation

Exceeding Rs. 2,000 and not exceeding Rs. 3,000, Drawing grounds of Appeal

Hearing fee, 30.00

5 per cent on the valuation

Exceeding Rs. 3,000 and not exceeding Rs. 5,000, Drawing grounds of Appeal

Hearing fee, 40.00

5 per cent on the valuation

Exceeding Rs. 5,000 and not exceeding Rs. 10,000, Drawing grounds of Appeal

Hearing fee, 50.00

400.00

Exceeding Rs. 10,000 and not exceeding Rs. 20,000, Drawing grounds of Appeal

Hearing fee, 100.00

750.00

Exceeding Rs. 20,000 and not exceeding Rs. 50,000, Drawing grounds of Appeal

Hearing fee, 200.00

1000.00

Exceeding Rs. 50,000, Drawing grounds of Appeal

Hearing fee, 500.00

1,000 Plus one percent on the excess over Rs. 50,000 subject to a maximum of Rs. 10,000

(2) Second Appeals

Not exceeding Rs. 1,000, Drawing grounds of Appeal

Hearing fee, 100.00

250.00

Exceeding Rs. 1,000 and not exceeding Rs. 5,000, Drawing grounds of Appeal

Hearing fee, 100.00

350.00

Exceeding Rs. 5,000 and below Rs. 10,000, Drawing grounds of Appeal

Hearing fee, 100.00

500.00

(3) Appeals from Orders

Not exceeding Rs. 5,000....., +, Same as second appeals

Exceeding Rs. 5,000, Drawing grounds of Appeal

Hearing fee, 100.00

500.00

(4) Revision

As determined by the Court

(5) Reviews

(Where notice is given and opposite party appears)

(i) In First Appeals, the costs to be fixed by the Court.

(ii) In Second and Miscellaneous Appeals the same costs as were allowed upon the hearing.

(6) Appeals under clause 10 of the Letters Patent

The same costs as were allowed at the previous hearing.

(7) Applications

(Where notice is given and opposite party appears)

To be fixed by the Judge or Judges who hear the application.

(8) Matrimonial (Including Divorce) Suits

In Matrimonial suits the fees allowable on taxation between party and party in respect of the employment of Advocate of the High Court, shall not exceed the following sums, unless the Judge hearing the suit, shall for special reasons arising out of the difficulty or duration of the suit (such reasons to be mentioned in his certificate) certify an additional sum on application made to him on or before the delivery of Judgment.

Rs.

In an undefended suit

200

In a defended suit up to the end of first day of hearing

500

For each succeeding day or part of a day, such part being not less than one hour

250

This rule also applies, mutatis mutandis, to appeals in the High Court from the decree of a Single Judge in such suits.

249. In all decrees and orders a sum calculated at the rate of 5 per centum of the Advocate's fee taxed, and subject to a minimum of Rs. 25 shall be taxed as costs on account of the fee of the Advocate's clerk or clerks.

(D) General Rules

250. Notwithstanding the provisions of these rules, if having regard to the circumstances of the case, the Court considers the fee allowable inadequate, or excessive it may upon delivery of judgment fix a higher or a lower fee than that hereinbefore prescribed, or order that no fee be entered in the table of costs of a party.

PART V

GENERAL

CHAPTER XXII

INFORMATION, INSPECTION OF RECORDS

AND ISSUANCE OF COPIES

251. One searching fee shall be charged for any number of copies taken from the same record and included in the same application, and no searching fee shall be charged in respect of copies of papers from

records of pending cases or of Judgments.

252. (i) The Chief Justice shall nominate an Officer in the rank of Registrar or Joint Registrar to be designated as In-Charge Copying Department. It shall be the responsibility of the Officer-in-charge of the Copying Department, to over-see, supervise and monitor all functions and activities in the Copying Department. all Officials working in the Copying Department shall be accountable and responsible to the Officer-in-charge Copying Department.

(ii) One or more Officials shall be designated as Copying Officers in terms of Section 76 of the Evidence Act. It shall be their duty to issue, under their signature, certified copies in accordance with these Rules.

****Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [(iii) Invariably, all certified copies of orders/judgments shall be prepared through computer but certified copies for exhibited documents, reports etc. shall be prepared through photocopiers only. In such cases, where technically, it is not possible or for any other reasons, it is either not feasible or not practicable or not desirable, copies shall be prepared through means other than computer either by photocopier or type written method or otherwise, but only with the prior written permission of the Officer Incharge, Copying Department.]

253. The fees to be paid for issuance of copies shall be as prescribed from time to time by the Officer-in-charge Copying Department with previous approval of the Chief Justice. For this and other incidental and ancillary purposes, the Officer-in-charge Copying Department may issue necessary administrative instructions which shall be binding on all concerned.

254. On payment of ordinary copying fee, endeavour shall be made that copy applied for is issued within 48 hours from the date of receipt of the application.

On payment of double copying fee, the copies applied for shall be issued either on the same day or latest within 24 hours from the time of receiving the application.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [**Note.**—This rule shall not apply in case of applications for certified copies of orders/judgments. In case of applications for certified copies of orders/judgments, urgent coping fees shall be payable and the certified copies of orders/judgments shall be given to the litigants within 24 hours from the date of orders/judgments become ready.]

255. A stranger to a suit or proceeding in the High Court may also be issued copies of pleadings in the suit or in the proceedings, or other documents, but with the prior approval of the Officer-in-charge Copying Department. In so far as issuance of copies of private documents in these proceedings are concerned, ordinarily the Officer-in-charge shall not grant approval except with the consent of the parties in the suit.

****Deleted by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** [**256.** x x x]

257. Every copy issued under these Rules or under the provisions of the Evidence Act, 1872 shall bear the seal of the Court and also an endorsement to the effect that 'it is a certified true copy of the original' and it shall be signed by the Copying Officer.

258. In addition to whatever is contained in these Rules or the administrative instructions issued pursuant hereto by the Officer-in-charge Copying Department, Civil Court Rules and all other enabling rules in this behalf shall mutatis mutandis apply to this Chapter.

259. No record of any case shall be removed from the Court building by anyone except in connection with the discharge and performance of official duties and upon permission in writing by the Registrar General except in the case of the Judges of the High Court and Registrar General himself or the Registrars/Joint Registrars.

260. It shall be ensured that inspection of documents undertaken by any applicant is carried out under the supervision of an official of the High Court and strict vigil is kept at the time of inspection so as to ensure that neither any document is removed nor tampered with during the course of inspection. The Officer-in-charge Copying Department, under whose authority, supervision and control, inspection shall be carried out, shall ensure that an Officer not below the rank of Section Officer is made responsible for every individual

inspection to be undertaken by any applicant.

261. Only such Reporters, Correspondents and Representatives of Media shall be allowed access in the Court, for the purposes of reporting and obtaining information as are duly accredited and approved by the respective Organisations. The Officer-in-charge Copying Department shall maintain a list of such Media persons for facility of his reference.

262. Normally rules relating to issuance of copies and inspection shall apply mutatis mutandis to the Media persons. However the Officer-in-charge Copying Department in his discretion may allow a Media person access to Court files or other documents under his personal supervision only in exceptional circumstances.

CHAPTER XXIII

DEPOSIT AND REPAYMENT OF MONEY

263. When money is required to be paid or deposited in the office of the Court it shall be accompanied by triplicate Chalangans which shall be delivered to the Accountant of the Court. If the Chalangans are in order the Accountant shall sign and return the three Chalangans to the person making the payment or deposit for presentation with the money to the Cashier of the Court. The Cashier shall thereupon receive the money, enter the receipt in the registers of receipts, sign each Chalan and send the Chalangans to the Accountant. The Accountant shall then enter the amount in his register of receipts, issue one copy of the Chalan to the person making the payment or deposit as a receipt for the money, send the second copy to the office to be filed with record concerned, and keep the third copy serially in a guard file. When the amount exceeds Rs. 500/- the copy of the Chalan intended as a receipt for the money shall be signed by the Deputy Registrar before it is issued. The Cashier shall remit the money he has received to the Treasury with the Treasury Pass Book, after verification by the Deputy Registrar or in his absence, by the Assistant Registrar, on the next day on which the Treasury is open following the day of payment.

264. No money paid into Court by way of deposit or otherwise shall be paid out of Court except under an order of a Judge or of the Registrar General or in the absence of the Registrar General, the concerned Registrar, made upon an application for the payment of money.

****Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006).** **[265.** Every application for the payment of money out of Court shall be in writing and signed by the party claiming in his own right or in his capacity as personal legal representative or as guardian to be entitled to the money or by his recognized agent for the purpose :

Provided that where the application is for payment of a sum exceeding Rs. 50, the application shall also be signed by an Advocate duly authorised in that behalf.]

266. (1) The application shall state—

- (a) the name, description and address of the applicant claiming to be entitled to the money;
- (b) the capacity in which such applicant claims to be entitled to the money;
- (c) the cause, appeal, matter or proceeding in which, or the date of the order under which, the money to which the application relates was paid into the Court and the date and number of the deposit; and
- (d) the precise amount for the payment of which an order is applied for.

(2) When the applicant desires that the money shall be paid out of Court on his behalf to any other person, the application shall state in clear language that the applicant desires that the money may be paid out on his behalf to such other person and shall state the name, description and address of such other person.

267. The application shall be presented in person by the applicant claiming to be entitled to receive such money, or by an Advocate acting on behalf of the applicant and in the latter case, except in the case of an application made under the proviso to Rule 265, the application shall be signed by the Advocate immediately below the signature of the applicant in authentication of the signature of the applicant :

Provided that when the sum to be refunded does not exceed Rs. 100, the applicant may—

(a) add to the application a request that the amount due less postal commission may be forwarded to his address by postal money order;

(b) obtain on the application the counter signature of a Judge, Munsif or Magistrate as to his identity; and

(c) forward his application countersigned as aforesaid to the Registrar General and, if the identity seems to be sufficiently established, the amount, less postal commission may, under order of a Judge or of the Registrar General, or in the absence of Registrar General or the Deputy Registrar, be sent to him by money order.

268. The Judge, or the Registrar General or in the absence of the Registrar General the concerned Registrar, may pass an order on the application allowing or refusing payment of the amount, or may before passing an order issue notice to show cause to any person or persons :

Provided that no order for payment shall be passed unless the application has been examined by the Accountant and bears his certificate in writing that there is no order in force stopping the payment of such money or any part thereof and stating the precise amount for the payment of which out of Court an order may be made.

269. When an order for payment is passed a payment order shall be prepared by the Accountant and signed by the Deputy Registrar and when it is ready the fact shall be notified in a register to be kept for public inspection outside the Accountant's Office. The applicant or his Advocate may then take delivery of the payment order from the Accountant after putting his signature on the counter-foil as receipt.

Pay orders shall remain in force for two weeks from the date they are made over to the applicant or his agent, and no payment after the period shall be made until the order is renewed. The date of delivery of the pay order shall be noted on it.

270. The Cashier is authorised to make payment in cash of a sum not exceeding Rs. 200. Before making payment the Cashier shall satisfy himself as to the identity of the payee and if the payee is not personally known to him he shall note in the register of pay orders the name, description and address of the person by whom the payee has been identified to his satisfaction. Before making payment the Cashier shall take from the payee a receipt for the money, duly stamped when a stamp is necessary. The Cashier shall enter all such payments in the register of pay orders.

271. When any money has remained in Court for more than twelve calendar months after the time when an application for the payment thereof might have been made, the accountant shall report the fact to the Registrar General who shall issue such notice as may be necessary that the money is ready to be paid out of Court. The expense, if any, of issuing such notice shall be charged to and defrayed out of the fund in Court.

272. The Cashier shall keep a supply of saleable forms of which he shall maintain an account. Payments for forms issued by him will be made in cash. The stock shall be verified every six months by the Deputy Registrar. The following are the saleable forms :—

- (1) Application for copy (Sch. VI-3);
- (2) Application for information (Sch. VI-4);
- (3) Chalan for deposit of money (Sch. VI-1a);
- (4) Application for refund of deposit (Sch. VI-2);
- (5) List of papers for the paper-book (Sch. VI-5) and
- (6) Application for noting appearance and supply of paper- books (Sch. VI-6).

273. The account registers to be kept are as follows :—

- (1) By the Accountant—
 - (i) Register of deposits received (Sch. VII-1);
 - (ii) Register of receipts (Sch. VII-6);
 - (iii) Register of payment orders issued (Sch. VII-4);

- (iv) Register of repayments of deposits (Sch. XXV-153);
- (v) Ledger of security deposits (Sch. VII-10); and
- (2) By the Cashier—
 - (i) General Cash-book (Sch. VII-5);
 - (ii) Pass-Book (Sch. VII-7);
 - (iii) Register of saleable forms (Sch. VII-9);
 - (iv) Register of payments made in Court;
 - (v) Register of money orders received (Sch. VII-8).

274. All the register of the Cashier and of the Accountant shall be examined daily by the Deputy Registrar. The daily examination shall consist in comparing—

- (1) the guard file of Chalans, the registers of deposits and receipts, the register of payment orders issued and the register of payments made in Court with the Cashier's general cash-book;
- (2) the Treasury pass-book with the above; and
- (3) the balance shown in the pre-emptory cash book with those in the general cash book.

275. Notwithstanding anything contained in the foregoing Rules of this Chapter, the Chief Justice may by an administrative order, direct that an Account in the name of the High Court may be opened in a Bank which shall be operated by the Registrar General or by such other Officer jointly with the Registrar General or otherwise as the Chief Justice may nominate for this purpose.

276. If and when such an Account is opened, transactions relating to the deposit of money in the Court by anyone or withdrawal of money from the Court by anyone, as are mentioned in the foregoing Rules in this Chapter may be carried out and operated through the aforesaid Bank Account.

277. To facilitate the deposit of money in the Bank in the name of the Court or the withdrawal of the money from the Bank by order of the Court, the Chief Justice may issue such administrative instructions as would be conducive to the object sought to be achieved under this Rules.

278. The Chief Justice may issue an administrative order directing that the accounts of the High Court may be maintained through a Computer system in accordance with the software developed on the basis of the requirements of the High Court. The maintenance of the account by the High Court through the Computer system may be in addition to the accounts maintained manually as per the foregoing Rules of this Chapter or alternatively as the Chief Justice may direct.

279. The Chief Justice, may by an administrative order direct that the function to be performed by Deputy Registrar under this Chapter may be performed by some other officer of the same or higher rank.

CHAPTER XXIV

FACILITIES TO BE GIVEN TO APPROVED LAW JOURNALS

280. The issue of copies to representatives of approved Law Journals shall be governed by the following provisions, namely :—

- (a) An approved list of Law Journals entitled to receive copies of judgments not marked N.A.F.R. (not approved for Reporting) under this rule shall be maintained under the orders of the Chief Justice.
- (b) No Law Journal shall be entered in this list unless it has given an undertaking that it will apply for a copy of every judgment delivered by the Court which is not marked N.A.F.R.

Provided that a Law Journal publishing cases only of a particular branch or branches of Law (such as Journals publishing Income-tax and Sales Tax cases) may also be entered in the approved list, if it gives an undertaking that it will apply for a copy of every judgment delivered by the Court, which is not marked N.A.F.R. in case relating to the branch or branches of Law which are published in the journal.

(c) No Law Journal on the approved list shall be entitled to receive more than one copy of such judgment under this Rule.

(d) As soon as judgment not marked N.A.F.R. has been received in the disposal Section or the Criminal Department, as the case may be, an assistant there shall enter it in a register to be called Register of Judgments not marked N.A.F.R. the entries being made in chronological order, and shall send such judgment immediately to the Section Officer of the Copying Department for the preparation of as many copies as there are law journals on the approved list.

(e) Two registers in the prescribed form to be called 'Register of Copies of Judgments not marked N.A.F.R.' and 'Register of Applications for copies of Judgments not marked N.A.F.R.' respectively shall be maintained by the Section Officer of the Copying Department with respect to such copies.

(f) Copies prepared under this Rule shall contain the following additional information, namely—

(i) the names of advocates appearing in the case on both sides;

(ii) the names of Judges delivering the judgment of the Court; and

(iii) full designation of the lower Court along with the date of its judgment of order.

Such additional information shall be sent to the Section Officer of the Copying Department by the Disposal Section or the Criminal Department, as the case may be, along with the judgment.

(g) copies prepared under this Rule shall be given priority over all ordinary copies and shall be prepared as quickly as possible.

(h) As soon as copies are ready they shall be delivered to the representatives of the journals on the approved list on their submitting a duly stamped application and on payment of Rs. 2 (in court-fee stamps affixed on the application) per copy of every such judgment or order.

(i) If the representative of any law journal on the approved list does not apply for copy of any judgment not marked N.A.F.R. within three weeks from the date on which it is so marked the name of such journal may be removed from the approved list.

(j) The 'Register of Copies of Judgments not marked N.A.F.R.' shall be open to inspection by the representative of any law journal on the approved list.

(k) The payment to the typists shall be made out of the Court's contingent grants.

I. Register of Judgments not marked N.A.F.R.

Sl. No., Description of the cases, Date of receipt of judgment in Disposal Section,, Criminal Department, Number of page in the judgment, Date of sending judgment to the Section Officer,, Copying Department, Signature of Section Officer,, C.D. with date of receipt of judgment, Date of receipt of Judgment from C.D., Remarks

1, 2, 3, 4, 5, 6, 7, 8

II. Register of Copies of Judgments not marked N.A.F.R.

Sl. No., Description of case, Date of receipt of judgment in C.D. from Disposal Section,, Criminal Department, Date and time when judgment received by typist, Signature of typist, No. of words, Date and time when handed over to Section Officer,, C.D., Signature of Section Officer,, C.D., Remarks

1, 2, 3, 4, 5, 6, 7, 8, 9

III. Register of Application for Copies of Judgments not marked N.A.F.R.

Sl. No., Date of application and value of stamp,, if any, Name of applicant,, Law Journal, Description of case, Signature of Section Officer,, CD, Date when copy delivered to, Signature of recipient,, applicant, Remarks

1, 2, 3, 4, 5, 6, 7, 8

CHAPTER XXV

PRESERVATION AND DESTRUCTION OF CIVILIAN

CRIMINAL RECORDS

281. Every record, unless otherwise provided, shall consist of two parts to be styled respectively Part I and Part II. To Part I there shall be prefixed a title page coloured white and to Part II a title page coloured blue.

282. Part I shall be preserved for ever and Part II for 3 years, after the expiry of which it shall be destroyed.

283. The period of 3 years mentioned in the preceding rule shall be calculated from the date of final decree or order, which, in cases of appeal to the Supreme Court, will be that of the decree or of the Supreme Court.

284. All copies of paper-books in excess of the number to be preserved, either permanently or for 3 years as directed in these rules shall be kept separate from the records to which they relate and be destroyed on the expiry of one year from the final decree or order of the High Court, or of the Supreme Court as the case may be.

285. It shall be permissible for the High Court to adopt such means and take such measures as are practically feasible for copying and preservation of the record to be maintained permanently through such electronic means as are available, such as, photo-copiers, films, computer or scanners. On the High Court being satisfied that by use of any one or more of the aforesaid methods, the record, in its true and accurate sense has been preserved, the original record may be ordered to be destroyed.

Civil Records

286. Part I of the record of every Original Civil Case shall contain the following papers :—

- (i) The table of contents.
- (ii) The order-sheet.
- (iii) Preliminary decree, if any, preceded by the judgment on which it is founded.
- (iv) The Judgment.
- (v) The final decree.
- (vi) The copy of the judgment and decree in appeal.
- (vii) Plaint or application initiating the proceedings with any schedule.
- (viii) The written statement of the defendant or the counter petition.
- (ix) Memorandum of the issues.

(x) Award of arbitrators or petitions of compromise, if given effect to in the decree; also the return or report and the map and field-book (if any) of a Commissioner in matters relating to immovable property if referred to or given effect to in the decree, but not any portion of the evidence taken by such Commissions also, in the case of minors or lunatics any order of the Court sanctioning the compromise.

(xi) Any paper whose preservation may be directed by the Presiding Judge or Judges.

Part II shall contain all other papers including Caveat filed if any.

287. Rule 286 shall apply, as far as possible, to all records of Original Matrimonial cases, Testamentary and Intestate cases, and inquiries under the Letters Patent into the conduct of Advocates, Vakils and Attorneys of the Court.

288. Part I of every Civil Appeal shall contain the following papers :—

- (i) The order-sheet.
- (ii) Remand order of the Court, if any,
- (iii) Final judgment of this Court.
- (iv) Decree.
- (v) Any paper whose preservation may be directed by the Presiding Judge or Judges.

Part II shall contain all other papers including Caveat file if any.

289. Judgments/orders in Civil Appeals dismissed under Order XLI, Rule 11, of Letters Patent Appeals dismissed summarily and of cases dismissed for default or in which the plaint or memorandum of appeal has

been rejected or returned, shall be included in Part I and Part II shall contain other papers.

290. Judgments and orders/order-sheets passed by this Court in applications giving rise to the Civil Revision, Civil Review, Tax Cases, and CMP shall be treated as Part I record, whereas the remaining papers shall be contained in Part II and the same shall be destroyed after three years.

Criminals Records

291. Part I of the records of Original Criminal cases shall contain the following papers :—

- (i) The order-sheet.
- (ii) Order of the Presiding Judge.
- (iii) Copy of order commuting a sentence or suspending the execution thereof remitting punishment.
- (iv) Any paper whose preservation may be directed by the Presiding Judge or Judges.

Part II shall contain two copies of the printed paper- book and all other papers.

292. Part I in Criminal Appeals, Revisions, References and Miscellaneous cases shall contain only judgments/orders/order- sheets and Part II shall contain rest of the papers.

293. The order-sheets and index about the result of Criminal Appeals and Revisions which have been summarily dismissed shall be maintained in Part I and other papers shall be shown in Part II.

294. Regarding application for bail and suspension of sentence and orders thereon, which are treated as Miscellaneous cases (Bail) Part I shall contain index indicating the date on which bail was granted or refused. Rest of the papers shall be kept in Part II and preserved for a period of three years.

295. The order-sheets and judgment passed in writ cases should be included in Part I records. The other papers including the applications and affidavits, if any, filed in reply should be included in Part II records which should be preserved for 6 years.

CHAPTER XXVI

MODE OF RECORDING EVIDENCE IN CIVIL CASES

296. Whenever in any suit or other proceedings it is required that evidence is to be taken in the High Court, normal and ordinary Rules of Evidence as also those contained in the Evidence Act shall apply mutatis mutandis to the recording of such evidence.

297. The evidence of each witness shall be taken down and recorded in English. It shall be in narrative form and not in question-answer form except when so requested specifically by any party with respect to any particular question or answer for a specific requirement.

298. The statement shall be typed and signed by the witnesses and the Judge.

CHAPTER XXVII

LAWAZIMA MATTERS AND BOARD

299. The Lawazima Board shall comprise of Joint Registrar (Judicial) in the first instance and Registrar General finally.

300. All Lawazima matters henceforth shall be listed before the Joint Registrar (Judicial) in the first instance. Weekly cause list of all such matters shall be published by the Joint Registrar (Judicial) with respect to

all Lawazima matters to be taken up before him in any week. He shall, in each case, as is listed before him, pass appropriate orders giving directions to the parties. In no case shall the time exceeding four weeks be allowed to any party for complying with any requirement or for filing requisites etc. Ordinarily the Joint Registrar (Judicial) shall grant time of one or two weeks. Only in exceptional and rare cases, time up to four weeks may be allowed.

301. Upon compliance of the directions issued by the Joint Registrar (Judicial) as mentioned in paragraph 2, and the matter being ready for being listed in the Court, the same shall be listed in the Court. If, however, the aforesaid direction of the Joint Registrar (Judicial) is not complied with by the party within the time granted by him for that purpose, without any reference to the Joint Registrar (Judicial) the matter shall be placed before the Registrar General's Lawazima Board by being shown in the Weekly Cause List of the week immediately after the expiry of the time granted by the Joint Registrar (Judicial).

302. (1) Registrar General's weekly cause list of the Lawazima Board before him shall be published every week. He shall take up matters as are put up before him in term of Rule 301. If a party satisfies the Registrar General with respect to the reasons and circumstances relating to his disability or inability in complying with the directions of the Joint Registrar (Judicial), the Registrar General may grant an opportunity not exceeding four weeks in exceptional and rare cases and one or two weeks in normal cases directing the party to comply with the directions.

(2) The Registrar General shall record in brief his reasons for giving such opportunity to the party. He shall post the matter before himself on the date next fixed by him for this purpose.

303. If on the date so fixed by the Registrar General, he finds that the party has still not complied with the order, the Registrar General shall record, in brief, the resume of the case with reference to the earlier orders passed by himself and the Joint Registrar (Judicial) and then refer the matter to the Court for passing final orders. In other words, the Registrar General shall not grant any second opportunity to the party.

304. Joint Registrar (Judicial) and the Registrar General both, in the Lawazima Board shall pass orders notwithstanding the absence of any counsel for the parties or either of them. The publication of the cause lists of both shall by itself be proof enough that the passing of the orders by them should be deemed to have been communicated to the parties as it is presumed that the counsel, whether they appear or do not appear before either of them, shall make sure by their own arrangements to be posted with the contents of the orders passed in Lawazima Board.

305. All matters presented in the Court, after the Stamp Reporter has given his report, shall be immediately listed before the Bench, if these are free from any defect. If, however, the Stamp Reporter finds out, reports and point out any defect in any matter, on the next working day, the matter shall be listed before the Joint Registrar (Judicial) in his Lawazima Board. For this a supplementary cause list may be published. If it is not practically feasible or possible to list the matter before the Joint Registrar (Judicial) on the next day, it may be listed before him the date after or in the weekly list. The Joint Registrar (Judicial) on such matter coming up before him shall afford a reasonable opportunity not exceeding one to two weeks in normal cases, and three to four weeks in exceptional and rare cases to remove the defects. No second opportunity for this purpose shall be given. If the defects are not removed by the next date fixed before the Joint Registrar (Judicial), he shall refer the matter to the Lawazima Board of Registrar General for being listed in the week following. The Registrar General may give only one opportunity, of one to two weeks in normal cases and two to three weeks in rare and exceptional cases for removing the defects. Only one opportunity shall be given by the Registrar General. If the defects are still not removed, by recording a brief resume, he shall refer the matter to the Court for passing final orders.

306. No case which falls in the category of Lawazima matter shall be listed in the Court unless it has been dealt with by the Lawazima Boards, as prescribed in this Order.

Explanation.—All matters relating to service of the parties, furnishing particulars or better particulars for the purposes of service, filing requisites, filing applications for condonation of delay in time-barred cases,

filing additional copies of pleadings or documents, making up of deficiency in Court fees, or judicial stamps etc. shall be included in the Lawazima Board. Other matters may later on be also included in the Lawazima Board.

307. The Chief Justice may amend the aforesaid explanation, by way of variation, modification or addition to the subjects/items included therein and may also, from time to time, issue administrative instructions for implementation of and carrying into effect the provisions of this Chapter. Such administrative instructions, as and when issued, shall be deemed to be part of this Chapter.

CHAPTER XXVIII SERVICE OF NOTICE UPON THE PARTIES

308. Ordinarily all notices shall be served through Registered Post, Speed Post, Courier or such other means as the Court may, from time to time, direct.

309. The Court may, in any particular case, keeping in view the emergent nature of the case, direct that a notice may be served upon a party through FAX, in addition to the aforesaid modes.

310. Whenever a notice is served upon anyone by a party, and not through the Court, invariably the party serving the notice shall file an affidavit in the Court in support of the fact that the notice has been served upon the person for whom it was meant. Along with the affidavit for service, the party serving the notice shall file document in proof of such service.

311. Affidavit of service should be filed either by the party himself or his pairavikar or through the authorised clerk of the Advocate of the party.

312. (1) Notices meant for all Central and State Government Departments, Public Officers, Organizations belonging to Central or State Governments or such Authorities as are covered by Article 12 of the Constitution of India, and whose offices or places of work are situated in the towns of Ranchi, Dhanbad, Jamshedpur, Bokaro and Hazaribagh, shall ordinarily be served upon them by the party directly in the manner hereinabove prescribed. Only in exceptional and rare cases, notices upon these Government Departments or Public Offices etc. shall be served through the agency of the Court.

(2) The Chief Justice may, by an administrative order vary, add or modify the places or the Institution or persons upon whom the aforesaid mode of service would be applicable.

313. If the notice is required to be served upon a party by the Court, the Court may either serve it by post or depute a Special Process Server for this purpose. the Court may also send notice to the District Judge of the district in which the service is required to be effected. Every District Judge who receives such a notice shall ensure that it is served through a Process Server detailed for this purpose and that the service is effected, complete in all respects, and the service report is sent to the Court within the time stipulated in the communication issued by the Court.

****Ins. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [313-A.** (1) The Process-fee stamp for the issue of notice to the defendant, the respondent, or other person to be served with notice shall be filed before an officer of the Court appointed for the purpose, within ten days from the date of the admission of the suit, appeal or other application or, the time as may be prescribed by the Court.

(2) There shall be filed together with the Process-fee the requisite number of the prescribed printed forms of such notice, duly filled up, the date of appearance and the date of the notice being left blank.

(3) The information entered in the forms shall be filled up in a bold, clear and easily legible handwriting.

(4) The parties filing the forms will be held responsible for the accuracy of the information entered therein.

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

(6) The requisite number of printed forms of notice will be supplied to the parties or their Advocates free of cost on application to the forms clerk. Other forms will not be accepted unless they are in the prescribed form and the quality of the paper and printing is as good as that of the forms supplied by the office of the Court.

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

313(B). If the Process-fee for the issue of the notice, or the notice forms duly filled up, be not filed as provided in the last preceding rule, the suit, appeal or application shall be placed before the Registrar who may, in his discretion, either grant further time for filing the Process-fee or the notice forms, or direct that on the date fixed the suit, appeal or application be placed before a Bench for orders.

313(C). No Process-fee for the issue of notice of any suit, appeal or application, nor notice form shall, except under the order of the Registrar, be received after the expiry of the ten days allowed by Rule 313-A or the time as may be allowed by the Court.

313(D). If the Process-fee be paid and the notice form duly filled up be filed within ten days or within the extended time allowed by Rule 313-B, the notice in the forms shall at once issue on the defendant, respondent, or other person to be served with notice.

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

313(F). In every case in which the Court orders a notice to issue under the last preceding rule, the party at whose instance such order is made shall file along with the process-fee as many typed copies of the application and affidavit as there are persons to be served.]

CHAPTER XXIX MISCELLANEOUS

314. The Registrar General of the Court shall be the Taxing Officer for the purpose and within the meaning of Section 5 of the Court Fees Act, 1870.

315. Whenever it is reported by the Stamp Reporter or otherwise that a document filed in the Court by any party or received in the Court by mistake or through inadvertence, or otherwise is not properly stamped, the matter shall immediately be taken up in the Lawazima Board in accordance with the provisions of Chapter XXVII of these Rules.

316. In every case, in which an order has been passed by the Court for issuance of notices upon the opposite parties, the petitioner or the appellant, as the case may be, shall deposit the requisites and file full and complete details and particulars, if not otherwise done, in such time as the Court may direct, and in the absence of any such direction within one week from the date of the passing of the order. If such a party fails to file such requisite or particulars within the time fixed by the Court, the matter shall appear in the Court for orders in the week after the expiry of the time granted by the Court. If on the other hand such a party fails to file requisites and particulars within one week from the date of the passing of the order by the Court, the matter shall appear in the Lawazima Board in terms of Chapter XXVII of these Rules.

PART VI CHAPTER XXX

RULES UNDER SPECIAL ACTS

A : Rules under Section 27 of the Bihar Reorganisation

Act, 2000 (Act No. 30 of 2000).

317. The High Court of Jharkhand shall have, in respect of the territory included in the State of Jharkhand all such jurisdiction, powers and the authority as, under the law in force immediately before the 15th November, 2000 was exercisable in respect of that part as was exercisable by the High Court of Judicature at Patna, including all the powers and authorities as provided under Letters Patent constituting the High Court of Judicature at Patna (under Acts 5 & 6 Geo. 5, C. 61).

B : Rules under Section 13 of the Code of Criminal Procedure, 1973 (Act 2 of 1974)

318. (i) These rules may be called the Special Judicial Magistrates (Specification of Qualifications) Rules, [2001]**Subs. 2001 for 1974 vide Rule 2 of High Court of Jharkhand (Amend.) Rules, 2001 (w.e.f. 6.6.2001).

(ii) They shall come into force at once.

319. (1) No power of a Magistrate of Second Class shall be conferred under sub-section (1) of Section 13 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) on a person unless he—

(a) holds a degree in law of an Indian University or of a Foreign University recognised in India by law;

or

(b) has exercised the powers of a Magistrate under the Code of Criminal Procedure, 1898 (Act 5 of 1898) for not less than one year; or

(c) (i) has exercised the powers of an Executive Magistrate under the Criminal Procedure Code, 1973 (Act 2 of 1974) for not less than one year; or

(ii) if he is a member of the Indian Administrative Service on training, has exercised the powers of an Executive Magistrate under the Criminal Procedure Code, 1973, (Act 2 of 1974), for not less than three months; or

(d) has acquired experience in relation to judicial and quasi-judicial work for not less than three years.

(2) No power of a Magistrate of first class shall be conferred under sub-section (1) of Section 13 of the Code of Criminal Procedure, on a person unless he has previously exercised the power of a Magistrate of second class for not less than two years to the satisfaction of the High Court.

Note.—The word ‘Magistrate’ includes Special Judicial Magistrate and Special Metropolitan Magistrate for the purpose of previous experience.

320. On a question as to whether a person does or does not possess any of the qualifications or experience specified in Rule 319, the decision of the High Court shall be final.

C : Rules for the Disposal of Election Petitions filed under the Representation of the People Act, 1951

321. In these rules, unless the context otherwise requires :—

(a) “the Act” means the Representation of the People Act, 1951;

(b) “the Code” means the Code of Civil Procedure, 1908;

(c) “the Court” means the High Court of Jharkhand at Ranchi;

(d) “the Judge” means the Judge or Judges of the Court who, from time to time, have been assigned by the Chief Justice under sub-section (2) of Section 80-A of the Representation of the People Act, 1951, for exercising the jurisdiction of the High Court under sub-section (1) of Section 80-A of the Act;

(e) “the Commission” means the Election Commission of India.

322. As soon as an election petition is filed, but not later than a week, an intimation thereof shall be sent to the Commission in the form specified in the schedule appended to these rules.

**Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [323. Every election petition shall,

immediately below the title, have endorsed on it "Election Petition" and shall, in addition to the grounds and date or dates specified in Section 81 and the contents required by Section 83 or any other section of the Act dealing with the presentation of such petitions, state—

- (a) the name and complete address of the petitioner;
- (b) the name and complete address with postal address of each person impleaded as respondents; and
- (c) the relief claimed.]

324. Every Election Petition shall be accompanied by (i) chalan showing deposit of Rs. 2,000/- as required by Section 117 of the Act, with Cashier of the Court towards security for the costs of the petition; and (ii) as many copies of the petition with copies of annexures, if any as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his signature to be a true copy.

325. (1) Every Election Petition shall be presented in the Registry of the Court in the same manner as is applicable to the presentation of other cases under these Rules. On the Election Petition being so presented, the Stamp Reporter of the Court shall endorse his report thereon and finding that it conforms to all requirements of law, is in time, properly stamped for the purposes of Court fee etc. and is accompanied by the requisite fee payable, send it to the Registrar General for listing before the Judge who has been assigned by the Chief Justice for this purpose.

(2) Immediately after it is presented, the petition shall be entered in a special register maintained for the registration of Election Petitions.

(3) If no such Judge has been assigned by the Chief Justice, the Registrar General, after the Election Petition is received by him upon the report of the Stamp Reporter, shall obtain the order of assignment of the Judge by the Chief Justice.

326. Where more Election Petitions than one are presented in respect of the same election, the Judge may, in his discretion, try them separately or in one or more groups.

327. (1) As soon as may be, after an Election Petition has been presented and registered, it shall be placed before the Judge for such orders as may be required to be passed under Section 86 of the Act.

(2) If the petition is not dismissed under Section 86(1) of the Act, a summons, on the direction of the Judge, shall be issued to the respondents to appear before the Judge on a day not earlier than three weeks from the date of the issue of the summons, unless otherwise ordered by the Judge.

(3) The summons shall be for filing written statement and settlement of issues and shall be served on the respondents through the District Judge of the district to which the respondent belongs or in the district in which he ordinarily resides, in the manner provided for the service of summons in the Code of Civil Procedure and the concerned district Judge will make his best endeavour to get the summons duly served and make a return of the service of summons before the date fixed.

328. In addition to the service of summons to be effected as afore-said, summons shall also be sent to the respondents at the address given by the petitioner by registered post acknowledgment due and/or in such other manner as is directed by the Judge. The petitioner shall file extra copies of petition along with copies of annexures, if any, duly attested as required by Rule 324(ii) to be served along with the summons by registered post.

329. Those of the respondents who file written statements or recriminatory statements as provided under Section 97(2) of the Act shall also furnish copies of such written statements and recriminatory statement and copies of annexures, if any, duly attested by such respondents under their own signature, for the use of the petitioner and the other respondents, as the case may be, and where a recriminatory statement under Section 97(2) alleges any corrupt practice, such a statement shall be accompanied by an affidavit in support of the allegation of such corrupt practice and the particulars thereof.

330. After the pleadings in the election petition are received, a date shall be fixed, at the direction of the Judge, for (1) discovery of documents, (2) inspection of the documents disclosed, and (3) the production of

documents which are in the possession and power of the parties and issues will then be settled.

331. (1) Within seven days of the settlement of issues, parties shall file a list of witnesses and pay the process fees along with the travelling allowance, the diet allowance and the local conveyance allowance as may be required.

(2) If no such list is filed or the required payment is not made within the period mentioned in sub-rule (1), the petition shall be placed before the Judge for necessary orders.

332. Witnesses may also be produced by the parties on the date of hearing without a summons provided the parties have filed a list of the same as required under Rule 331.

333. (a) A party applying for a summons to a witness shall be required to deposit with the cashier of the Court at the time of applying for summons a sum sufficient to cover the travelling allowance, the diet allowance and the local conveyance allowance of the witnesses according to the scale given below :

Provided that in cases not fully or clearly covered by this Scale or in cases where the Judge thinks special considerations should prevail, the Judge shall award such amounts as he deems proper :

Provided further that the local conveyance allowance shall be payable only if the party calling the witness does not provide conveyance to him.

Scale

Class of witness, Travelling allowance, Diet allowance, Local conveyance allowance

Class-I, +, +, +

Gazetted Officers,, Professionals like Doctor,, Advocates,, Architects,, Chartered Accountants,, etc. Income Tax payee,, Members of Parliament,, Members of State Legislatures., **By Rail**

1st class or 2nd class A.C. Sleeper/Chair Car fare., Rs. 250 per day., By Taxi

, **By Road**

Taxi fare at the rate prescribed by the Directorate of Transport of the State Govt. and if no such rate has been fixed as the Court thinks reasonable., ,

Class-II, +, +, +

All others except those mentioned in Class-I, **By Rail**

Sleeper class or 2nd class fare., Rs. 150/-

per day, By three Wheeler Auto-rickshaw

, **By Road**

Actual Bus fare., ,

Note 1.—Travelling allowance will be payable for the journey performed by the shortest route.

Note 2.—If in addition to travelling by rail a witness is required to travel by bus also, the actual bus fare paid for such part of the journey shall also be admissible for travelling allowance.

Note 3.—Diet allowance shall be payable, irrespective of the distance travelled, for the actual time required for journey each way and also for the time taken in giving evidence and for the time of detention necessary for the purpose of giving evidence. A part of the day shall be counted as equal to a day.

Note 4.—(a) The Joint Registrar of the Court shall decide as to which class a witness belongs or which of the alternative modes of travelling should be allowed in a particular case. A witness dissatisfied by his decision may request that a reference be made to the Judge and upon such request the question shall be referred to the Judge. The Judge thereupon shall give such directions as he thinks just and proper in the case.

(b) Payment shall be made to the witness out of the amounts deposited with the Cashier after the witness has given evidence or he is discharged by the Judge and a certificate to either effect has been given by the “Bench Clerk”.

Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [335.** (i) The evidence of each witness examined shall be taken down and recorded in English. It shall be in narrative form and not in question-

answer form except when so requested specifically by any party with respect to any particular question or answer for a specific requirement.

(ii) The statement shall be typed and signed by the witnesses and the Judge.]

336. No commission for the examination of any witness will be issued unless the Judge considers it absolutely necessary and the party at whose instance such commission is to be issued has deposited with the Cashier of the Court within such time as may be fixed, such sum as the Court may consider reasonable for the purpose.

337. (a) No document in any language other than English shall be admitted in evidence unless it is accompanied by an English translation which shall either be the official translation or translation, the accuracy of which is certified by an Advocate of the Court. Costs of the translations shall be at the discretion of the Court.

(b) Exhibit marks on documents and material objects shall be written by the Bench Clerk and signed by the Judge or under his orders by the Bench Clerk.

338. In case of filing of an application for withdrawal of an election petition the cost for publication in the official Gazette of the notice as required under sub-section (2) of Section 109 shall be realised from the petitioner, who shall deposit the necessary amount as soon as the withdrawal petition is filed.

339. (1) Where an election petition abates under sub-section (1) of Section 112, the notice of such abatement shall be published in the official Gazette.

(2) No cost shall be realised for publication of the notice required under clause (b) of sub-section (3) of Section 110, sub-section (2) of 112 and Section 116.

(3) Unless otherwise directed by the Judge the official Gazette, in which the notice as required under sub-section (2) of Section 109, clause (b) of sub-section (3) of Section 110, sub-section (2) of Section 112 and Section 116 shall be published in the State Gazette in case of election petitions relating to State Legislatures and Gazette of India in case of election petitions relating to the Parliament.

(4) The office shall send such notice for publication in the official Gazette within one week of the time when such publication becomes necessary.

Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). **[340. As soon as election petition is dismissed by the High Court under sub-section (1) of Section 86, or the same has been finally disposed of on merits as provided for under Sections 98 and 99, or the High Court passes an order under sub-section (1) of Section 116-B, the office shall intimate the order of the decision of the High Court to (i) the Commission and (ii) the Speaker or the Chairman as the case may be, of the Houses of Parliament or of the State Legislature concern; and thereafter, as soon as possible, it shall also forward to the Commission an authenticated copy of the judgment and the formal order of the Court. The office shall also report the Commission when an election petition is allowed to be withdrawn under Section 111 after orders are passed in that behalf by the High Court. Where an election petition abates and no attempt has been made for substituting another person for continuing the said petition as provided under Section 116 and the Court passes a final order treating the petition as abated, the office shall also report to the Commission.]

Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). **[341. An Advocate intending to act for a party shall file a vakalatnama signed by his client. He shall also give his office address where all notices, processes etc. may be served on him, if necessary. Such service will be regarded as proper service on the party.]

342. The Jharkhand High Court Rules, except in so far as they are inconsistent with the above rules, shall apply mutatis mutandis to all election petitions. Where no specific provision is made in the Act, the Code or the High Court Rules, the Judge may pass such orders as he may consider necessary.

343. These rules shall come into force with effect from the date of notification in Gazette :

Provided that the election petitions pending in the High Court on the date these rules come into force, shall also be heard and disposed of in accordance with the foregoing provisions of these Rules.

SCHEDULE

In the High Court of Jharkhand at Ranchi

Election Petition No..... of 20.....

Petitioner(s).....

Versus

Respondent(s).....

Calling in question the election to the House of the People/Council of States/Legislative Assembly/
Legislative Council.....of Respondent(s) no..... from the Constituency in the district or districts
of..... Presented to the High Court on theday of20.....

D : Rules under the Bankers' Books Evidence Act, 1891

(XVIII of 1891)

344. A Bank ordered under the Banker's Books Evidence Act, (XVIII of 1891) to supply certified copies of entries from its books shall be entitled to charge on the following scale :—

Scale of fees

Searching fee - For each year or part of a year in respect of which search is made

Rs. 5

Copies - For each Bank folio or part thereof.

Rs. 5

Certificate - For the certificate under Section 6 of the Act

Rs. 5

A Bank folio for this purpose is a page of the Bank's books of not less than 40 and not more than 50 lines.

345. An application for an order under the said Act shall be made ex parte upon petition and the Court or a Judge may direct that notice of the application shall be served on the Bank or Banks named in the application. The petition shall set out particulars of the entries of which it is desired to obtain copies (or, if this is impossible, the year or years in which such entries will appear) and the materiality of such entries.

346. All applications shall be made in sufficient time to allow three clear day's notice required to be given by Section 6(2) of the Bankers' Books Evidence Act, and all application made in insufficient time shall state the reason thereof.

347. The party who has obtained such order shall serve it upon the Bank or Banks affected and at the same time pay to the Bank or Banks the searching fee of which the amount shall be stated in the order.

348. Upon service of the order the Bank or Banks shall forthwith cause search to be made and shall thereafter forthwith inform the party who has obtained the order the amount to be paid to such Bank or Banks for copies of the entries to be made in terms of the order.

349. Thereupon the party concern shall pay to the Bank or Banks the amount so stated and the fee for the certificate and the Bank or Banks shall upon receipt thereof forthwith prepare and deliver to the party the copies of the relevant entries together with the certificate under Section 6 of Act.

350. Nothing in the above rules shall be construed as derogating from the power of the Court or the Judge to make such orders as to costs in particular cases as may seem appropriate to it or him under Section 7 of the Act.

E : Rules under the Chartered Accountants Act, 1949

(Act XXXVIII of 1949)

351. The Council of the Institute of Chartered Accountants of India (hereinafter referred to as the Council), shall forward to the High Court, alongwith the finding of Council, the following documents in original

:-

- (a) Report of Disciplinary Committee;
- (b) Complaint or information;
- (c) Written statement in defence, if any;
- (d) Deposition of witnesses, affidavits, exhibits and other oral and documentary evidence;
- (e) Notes of the hearing before the Disciplinary Committee and the Council;
- (f) Such other papers which were before the Disciplinary Committee as the Council may consider

relevant for the disposal of the case :

Provided that the High Court may thereafter call for any other paper from the Council which the High Court would consider necessary for the proper determination of the case.

The Council shall also furnish the High Court with five additional identical copies of the papers aforesaid to be used as paper-books, out of which one will be handed over to the opposite party.

352. A translation in English of the documents, which are required to be translated according to Rule of Chapter XVI and are included in the material papers, shall be furnished by the Council under its own authority. If the High Court considers that an official translation of any document or documents is necessary, such translation shall be made in the High Court at cost of the Council.

353. The Council shall forward, along with the material papers mentioned above, a memorandum containing the full and correct postal addresses of all the persons or authorities on whom notices are required to be served under Section 21(2) of the Act and also of the State Government concerned in case the complaint had been lodged by such Government.

354. Cases forwarded to the High Court under Section 21 of the Chartered Accountant Act, 1949 (hereinafter refer to as the Act) shall be registered as civil references and shall be dealt with on the Appellate side.

355. On the case being registered, the Registrar General shall fix a date for the hearing of the case and shall cause notice to be served under Section 21(2) of the Act in the form prescribed in Appendix CC. The date shall be so fixed that there will be an interval of not less than 15 days between the date of the service of the notice and the date of hearing.

Notice of the date fixed for further hearing of the case under Section 21(3) of the Act shall be given to the Advocates of the parties, or to the party himself, if he is not represented, after receipt of further finding under Section 21(3).

356. The notice to all persons or authorities refer to in Rule 353 at their addresses furnished by the Council shall be sent by registered post, with acknowledgment due, at the cost of the Council.

The cost of service of the notice shall be deposited by the Council with the High Court within two weeks of the forwarding of the finding mentioned in Section 21(1) and (2) of the Act.

357. The case shall be placed for hearing before a Division Bench, hearing Miscellaneous Appeals, if no such Bench be available, the case shall be placed before a Bench hearing First Appeals.

358. Except as otherwise provided in these rules, the provisions of the Code of Civil Procedure, 1908, so far as may be, shall ordinarily apply.

359. After the hearing of the reference when the High Court has passed its final order in the case, the Deputy Registrar shall forward a certified copy of the said order to the Secretary of the Council for necessary action.

F : Rules under Section 77 of the Trade Marks Act, 1940

(Act V of 1940)

360. Definition.—In these rules, unless there is anything repugnant in the subject or context :—

(i) “Act” means the Trade Marks Act, 1940.

(ii) “Registrar of Trade Marks” includes the Deputy Registrar of Trade Marks and the officer to whom any particular functions of the Registrar are delegated in pursuance of Section 4(28);

- (iii) “Registrar and Deputy Registrar” shall mean respectively the Registrar General and the Deputy Registrar of the Jharkhand High Court;
- (iv) “Judge” means the Judge nominated by the Chief Justice for the purpose; and
- (v) “Court” means the High Court of Jharkhand at Ranchi.

361. Title of Application and other proceedings.—All applications or appeals under any provision of the Act shall be entitled :—

In the High Court of Jharkhand at Ranchi.

Application/Appeal under Section..... of the Trade Marks Act, 1940

.....Petitioner/Appellant

Versus

.....Opposite party/Respondent.

362. Mode of Applications and Appeals—All applications and appeals under the Act shall be made by petition supported by affidavit and shall be presented at the centralised filing counter.

363. Jurisdiction.—All matters under the Act shall be ordinarily heard by the Judge sitting singly.

364. Admission of applications and appeals.—If the Registrar General finds the application or appeal, as the case may be, to be in order, he shall place it before the Judge for admission, who may either admit it and direct notice thereof to be given to the opposite party or may reject it summarily or may make such other order as he thinks fit.

365. Service of notice on Registrar of Trade Marks.—Notice of all applications and appeals admitted by the Court shall be served on the Registrar of Trade Marks who shall have a right to appear and be heard and shall appear if so directed by the Court.

366. Stay of pending suits and proceedings.—If any application, reference or appeal is made to the High Court under the Act and any suit or other proceeding concerning the Trade Marks in question is pending before the High Court or any District Court, the High Court may stay such suit or proceeding until the disposal of such application, reference or appeal.

367. Reference under Section 72(b) of the Act.—(a) When the Registrar of Trade Marks makes a reference to the Court under Section 72(b), he shall give notice thereof to the party or parties concerned.

(b) On receipt of the reference in the Court, the Registrar General shall fix a date for the hearing of the same and the parties concerned shall be given atleast one month clear notice of the date so fixed. The reference shall thereafter be placed in due course before the Judge for hearing.

368. Procedure for withdrawal of application under Section 76(2).—Where under Section 76(2) an applicant becomes entitled to, and intends to withdraw, he shall give notice of the intention in writing to the Registrar of Trade Marks and to the other side, if any, to appeal within one month after the necessary permission of the court to advance additional grounds has been obtained. He shall also give notice of such intention in writing to the registrar General who shall thereupon place the appeal on the list for disposal as soon as possible.

369. Counter claim for rectification of register in a suit for infringement.—A defendant in a suit for infringement filed in the Court may, in regard to any registered trade marks in issue, make a counter-claim for the rectification of the register and shall, within the time prescribed for the filing of the counter-claim, serve a copy of his counter-claim upon the Registrar of Trade Marks who shall thereupon be entitled to take part in the suit.

370. Order of Court to be sent to Registrar of Trade Marks.—A certified copy of every judgment passed by the Court shall be sent by the Deputy Registrar to the Registrar of Trade Marks who shall comply with the directions therein as soon as possible.

371. Application of the Code of Civil Procedure and rules of the Court.—In case not provided for in these rules, the provisions of Code of Civil Procedure, 1908, and the rules of Code shall apply mutatis mutandis to all proceedings under the Act in the Court.

G : Section 4 of the Powers of Attorney Act, 1882

(Act VII of 1882)

372. The Registrar General shall have the custody of all instruments deposited in the Court under Section 4, clause (a), of the Powers of Attorney Act, VII of 1882.

373. A register of all such documents shall be kept under the following headings :—

- (i) Description of documents;
- (ii) Date;
- (iii) By whom deposited;
- (iv) When deposited.

374. The following fees shall be paid by means of Court fee stamps under Section 4 clauses (a), (b) and (c) :—

Rs. P.

- (i) For filing every power and other documents
100. 00
- (ii) For obtaining copy
10.00
- (iii) Where the copy is presented by the party @ Rs. 5 per folio
5.00
- (iv) For searching and inspecting each set of documents
10.00

H : Rules prescribing fee under Section 16 of the Indian Bar Councils Act, 1926 (XXXVIII of 1926)

375. The fees payable as costs by any party in respect of the fees of his adversary's Advocate upon all proceedings in the High Court shall be fixed and payable in accordance with Rule 248 of Chapter XXI, Part IV of the Rules of the High Court.

376. The fees payable as cost by any party in respect of the fees of his adversary's Advocate upon all proceedings in any Court subordinate to the High Court shall be in the discretion of that Court and shall ordinarily be according to the scale prescribed for pleaders in Rule 426 of the Civil Court Rules, Volume I.

I : Rules under Section 73 of the Copyright Act, 1957

(Act XIV of 1957)

377. In these rules unless there is anything repugnant in the subject or context,—

- (i) "Act" means the Copyright Act, 1957;
- (ii) "Registrar of Copyrights" includes the "Deputy Registrar of Copyrights" to whom any particular function of the Registrar of Copyrights may be assigned in pursuance of Section 10(2) of the Act;
- (iii) "Board" means the "Copyright Board" constituted under Section 11 (i) of the Act;
- (iv) "Court" means the High Court of Jharkhand at Ranchi;
- (v) "Registrar" and "Deputy Registrar" mean, respectively, Registrar General and the Deputy Registrar of the Jharkhand High Court;
- (vi) "Section" means a Section of the Act.

378. All appeals under Section 72(2) shall be registered and styled as "Miscellaneous Appeals".

379. Every appeal under Section 72(2) shall be made in the form of a memorandum signed by the appellant or his Advocate and shall be accompanied by a certified copy of the decision or order appealed from and shall set forth the grounds of objection concisely and under distinct heads. The memorandum and its annexures shall be filed in duplicate with a complete index of the papers filed.

380. Every appeal shall, soon after it is registered, be posted for orders before a Division Bench as to issue of notice to the respondents. The Court may either direct notice to issue and pass such interim order as

it may deem necessary or reject the appeal.

381. (a) The service of notice to the respondent or respondents shall ordinarily be effected through registered post. An acknowledgment purporting to be signed by the respondent or the agent or an endorsement by a postal employee that the respondent or the agent refused to take delivery may be deemed by the Court to be prima facie proof of service. The appellant shall file as many typed copies of the memorandum of the appeal as there may be parties to be served and also the requisite number of postal envelopes bearing adequate postal stamps to enable service to be effected on the respondent or respondents by registered post with acknowledgment due.

(b) The notice of appeal shall be served on all respondents effected and on such other persons as the Court may direct :

Provided that on the hearing of any such appeal, any person who desired to be heard in opposition and appears to the Court to be proper person to be heard, shall be heard notwithstanding that he has not been served with the notice of the appeal and shall be liable to costs in the discretion of the Court if so ordered.

(c) Notice meant for the Board shall be served on the Registrar of Copyright in the manner provided in clause (a) of this rule. The Board shall have a right to appear in the appeal through the Registrar of Copyrights.

382. If the appellant does not remove the defect, if any, in the memorandum of appeal, or, if he does not file the requisites within a time to be fixed by the Registrar General the appeal shall be laid before the Court for such orders as may be deemed fit.

383. When an appeal under Section 72(2) has been admitted, the Registrar General shall send for the record and on receipt thereof shall take steps for the preparation of paper books, so far as may be, in accordance with the rules of the Court regarding preparation of paper books in appeals from original orders.

384. Appeals under Section 72(2) shall be heard by a Bench of not less than two Judges.

385. When an appeal under Section 72(2) has been preferred, the Court may, on such terms and condition as it thinks fit, stay further proceedings in any matter relating to the copyright concerned before the Board till the disposal of the appeal.

386. Save as provided in the Act and these rules, the provisions of the Code of Civil Procedure and the rules of the Court shall apply mutatis mutandis to such appeals.

J : Rules under the Contempt of Courts Act, 1971

(Act X of 1971)

387. (1) These Rules shall be called the Contempt of Courts (Jharkhand High Court) Rules 2001.

(2) They shall come into force on the date of their publication in the official Gazette.

388. In these Rules unless there is anything repugnant to the subject or context :

(a) 'Act' means the Contempt of Courts Act, 1971 (Act 70 of 1971).

(b) 'High Court' means the High Court of Jharkhand.

(c) 'Judge' means Judge of the High Court of Jharkhand at Ranchi.

(d) 'Subordinate Court' means any Court subordinate to the High Court of Jharkhand at Ranchi.

(e) 'Registrar' means the Registrar General of the High Court of Jharkhand at Ranchi and includes the Joint Registrar(s).

(f) All other words and expressions used in these Rules, but not defined therein, shall have the meanings respectively assigned to them in the Act.

Subs. by Second Amendment Rules, 2005, (w.e.f. 28.1.2006). [**389. (i) Every petition for initiating a proceeding for civil contempt within the meaning of the Act shall be registered as Civil Miscellaneous Petition (CMP) whereas petitions for initiating proceedings for criminal contempt shall be registered as Original Criminal Miscellaneous Petitions (Or. Cr. M.P.).

(ii) In every such petition the State of Jharkhand shall be made a respondent.

(iii) Every such petition shall contain—

(a) Name, description and place of residence or complete official address with designation of the

petitioners and of person or persons charged;

(b) Nature of the contempt alleged and such material facts, including the date or dates of the commission of the alleged contempt, as may be necessary for proper determination of the case;

(c) If a petition has previously been made by him on the same facts, the petitioner shall give the details of the petition previously made and shall also indicate the result thereof;

(iv) The petition shall be supported by an affidavit;

(v) Where the petitioner relies upon a document or documents in his possession or power, he shall file such document or documents or true copies thereof with the petition.

(vi) No court-fee shall be payable on the petition, and on any document filed in the proceeding.]

390. A petition for civil contempt as well as for criminal contempt shall be filed at the Centralised filing counter of the High Court.

391. Every motion made by the Advocate-General under Section 15 of the Act shall state the allegations of the facts and the view of the motion maker that in relation to those facts contempt appears to have been committed to which the Court should take cognizance and take further action. The motion should contain sufficient material to indicate why the Advocate-General is inclined to move the Court.

392. Every petition for initiating a contempt proceeding shall be posted before a Bench of the Court for preliminary hearing and for orders as to issue of notices, except petitions in respect of civil contempt which relates to orders or directions passed by a Judge of this Court which shall be listed for preliminary hearing and orders as to issue of notice before a Judge of this Court. Upon such preliminary hearing the Court if satisfied that no prime facie case has been made out for issue of notice, may dismiss the petition, and if not so satisfied, direct that notice of the petition be issued to the contemner.

393. (i) The notice to the person charged shall be issued in Form 1. When action is instituted on a petition, a copy of the petition along with annexures and affidavits shall be served upon the person charged.

(ii) The person charged may file his reply show cause duly supported by an affidavit or affidavits.

(iii) The person charged shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during the hearing till the proceeding is finally disposed of by the order of the Court.

394. The Court may direct the Advocate General or any other State Counsel to appear and assist the Court.

395. The Court may in appropriate cases before initiating proceeding for contempt against the contemner, issue notices to such contemner directing him to show cause as to why a proceeding for contempt be not initiated against him. In such cases, it shall not be necessary for the alleged contemner to be present in Court and question of initiating a proceeding for contempt shall be considered on the basis of the show cause filed.

396. The notice of every proceeding for contempt shall be served personally on the person charged unless the Court, for the reasons recorded, direct otherwise. In that event the service may be effected by alternative form of service authorised by the Code of Civil Procedure or Code of Criminal Procedure, as the case may be.

397. (i) The Court may, if it has reason to believe, that the person charged is absconding or is otherwise evading service of notice, or if he fails to appear in person or to continue to remain present in person in pursuance of the notice, direct a warrant bailable or non-bailable for his arrest, addressed to one or more police officers and may order attachment of property. The warrant and the writ of attachment shall be issued under the signature of the Registrar General. The warrant shall be in Form II and shall be executed, as far as may be in the manner provided for execution of warrants under the Code of Criminal Procedure.

(ii) The warrant shall be executed by the officer or officers to whom it is directed, and may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

(iii) Every person who is arrested and detained shall be produced before the nearest Magistrate within

a period of twenty- four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, who shall authorise detention for the period till such person is produced before the High Court.

(iv) Every person who is arrested and detained when produced before the High Court, shall be released on bail if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties, with condition that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court :

Provided further that the Court may if it thinks fit, instead of taking bail from such person, shall release him on his execution of a bond without sureties for his attendance as aforesaid or without executing any such bond. The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to all the bonds executed under the Rules.

398. If it appears to the Court that an enquiry should be held in which witnesses have to be examined, the Court may make order for the purpose of securing the attendance of any person to be examined as a witness and for discovery or production of any document.

COMMENT

Rule 398—Enquiry under—When not appropriate.—It may not be possible for a Court to embark upon an investigation into the alleged obstruction of the course of justice. That the proper course to adopt is to leave the petitioner to prosecute the criminal proceeding that he has initiated and if it is permissible, to move this Court for taking action under the Contempt of Courts Act after the prosecution is completed. [Shailesh Kumar Singh v. State of Jharkhand & Ors., 2004 (1) JCR 1 (Jhr) : 2004 (1) JCJR 57 (Jhr)].

399. The Court may pass such order as it thinks fit consistent with the provisions of the Act.

400. Where contempt is committed in the presence of Court, or during the hearing of a case by the Court, the proceeding initiated for such contempt shall be conducted in accordance with the procedure prescribed by Section 14 of the Act.

401. (i) Reference under Section 15(2) of the Act may be made by a Subordinate Court either suo motu or on application received by it.

(ii) Before making a reference the subordinate Court shall hold a preliminary enquiry by issuing a show cause notice accompanied by copies of the relevant documents, if any, to the contemner and after hearing him, the subordinate Court shall write a concise reasoned order of reference indicating why contempt appears to have been committed.

402. The Jharkhand High Court Rules which are not inconsistent with the provisions of these Rules mutatis mutandis shall apply to the proceedings in the High Court.

403. Where a person charged with contempt is adjudged guilty and is sentenced to suffer imprisonment, a warrant of commitment and detention shall be made out in Form III under the signature of the Registrar General. Every such warrant shall remain in force until it is cancelled by order of the Court or until it is executed. The Superintendent of the Jail shall in pursuance of the order receive the person so adjudged and detain him in custody for the period specified therein, or until further orders.

404. Appeal.—The appeal presented to the Court against the decision of a Single Judge under Section 19(1)(a) of the Act shall be filed in accordance with the Jharkhand High Court Rules meant for Letters Patent Appeals and such appeal shall be placed before a Division Bench for admission and hearing. After admission of the appeal, the provisions regarding issuance of notice, and preparation of paper book shall be governed by the Jharkhand High Court Rules meant for Letters Patent Appeals.

405. The provisions of the Code of Criminal Procedure, 1973, which are not inconsistent with the provisions of the Act and these Rules, shall be applicable to enforce and execute the orders passed by the High Court in proceedings for contempt.

FORM 1

Notice to a person charged with Contempt of Court

[See Rule 393]

In the High Court of Jharkhand at Ranchi

Whereas your attendance is necessary to answer a charge of Contempt of Court by (here briefly state nature of the contempt).

You are hereby required to appear in person (or by Advocate if the Court has so ordered) before this Court at Ranchi on the..... day..... of.....20.

*You shall attend the Court in person the.....day of.....20....., and shall continue to attend the Court on all days thereafter to which the case against you stands adjourned and until final orders are passed on the charge against you.

Herein fail not.

Dated this..... day of.....200.....

(SEAL)

Registrar General.

*To be omitted where the person charged is allowed or ordered to appear by Advocate.

FORM II

Warrant of Arrest

[See Rule 397]

To

(Name and designation of the person or persons who is or are to execute the warrant)

Whereas.....of.....is charged with committing contempt of this Court, you are hereby directed to arrest the said.....and to produce him before this Court.

Herein fail not.

(If the Court has issued a bailable warrant, the following endorsement shall be made on the warrant)

If the said.....shall give bail in the sum of Rs..... with one surety in the sum of Rs.....(or two sureties each in the sum of Rs.....) to attend before this Court on the.....day of.....20.....and to continue so to attend until otherwise directed by this Court, he may be..... released.

Dated this.....day of..... 20.....

(SEAL)

Registrar General

FORM III

Warrant of commitment for Contempt

[See Rule 403]

In the High Court of Jharkhand at Ranchi

To

The Superintendent of the Jail.....

Whereas at the Court holden on this day (name and description of the contemner) has been adjudged by the Court guilty of wilful contempt of Court, and he has been sentenced to suffer imprisonment for the period..... (here specify the term)/and/or to pay a fine of rupees.....

This is to authorise and require you, the Superintendent of the said Jail, to receive the said (name of the contemner) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) or for such shorter period as may hereafter be fixed by order of this Court and intimated to you. You are directed to return this warrant with an endorsement certifying the manner of its execution.

You are further directed that while the said..... is in your custody, produce the said..... before this Court at all times when the Court shall so direct.

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

(SEAL)

Registrar General

PART VII

LETTERS PATENT CONSTITUTING THE HIGH COURT OF JUDICATURE AT PATNA

Recital of Acts 24 and 25 Vict. C. 104.—GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the seas, Kind, defender of the faith, Emperor of India, To All whom these Presents shall come, greeting :

Whereas by an Act of Parliament passed in the Twenty-four and Twenty-fifth Years of the reign of Her Late Majesty Queen Victoria, and called the Indian High Courts Act, 1861, it was, amongst other things, enacted, by section one, that it should be lawful for Her Majesty, by Letters Patent under the Great seal of the United Kingdom, to erect and establish a High Court of Judicature or Fort William in Bengal, for the Bengal Division of the Presidency of Fort William;

and, by section two, that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act was declared :

and, by section eight, that upon the establishment of such High Court as aforesaid the Supreme Court and the Court of Sadar Diwani Adalat and Sadar Nizamat Adalat at Calcutta, in the said Presidency, should be abolished;

and, by section nine, that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice admiralty, testamentary, intestate and matrimonial jurisdiction, original, and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, As Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby; and that, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts :

and whereas it was further declared by section sixteen of the said recited Act that it should be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of territories within Our Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Court established at the Presidencies of Fort William in Bengal, or Madras, and of Bombay, as We from time to time might think fit and appoint; and that it should be lawful for Us, by such Letters Patent, to confer on any new High Court which might be so established any such jurisdiction, powers and authority as under the same Act was authorized to be conferred on or would become vested in the High Court established in any of the said Presidencies; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor-General or Governor of the Presidency in which such High Courts were established, should as far as circumstances might permit, be applicable to any new High Court which might be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the Government of the said territories :

Recital of establishment of High Court at Fort William and Allahabad.—And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria by Letters Patent under the Great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the twenty fifth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-two, did erect and establish a High Court of Judicature of Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and did constitute that Court to be a Court of Record :

And whereas Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty eighth day of December, in the twenty-ninth Year of Her Reign in the Year of Our Lord One thousand eight hundred and sixty five, did revoke the said Letters Patent bearing date the Fourteenth day of May in the Year of Our Lord One thousand eight hundred and sixty-two, but notwithstanding that revocation did continue the said High Court of Judicature at Fort William in Bengal and declared that the Court should continue to be a Court of Record :

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the Kingdom of Great Britain and Ireland, bearing date at Westminster the Seventeenth day of March, in the Twenty ninth Year of Her reign, in the Year of our Lord One thousand eight and sixty-six, did erect and establish a High Court of Judicature for the North-Western Provinces, which said Court is situated at Allahabad in the Province of Agra and is now called the High Court Judicature at Allahabad, and did constitute that Court to be a Court of Record :

Recital of Act 1 & 2 Geo. 5. C. 18.—And whereas by an Act of Parliament passed in the First and Second Years of our Reign, and called the Indian High Courts Act, 1911, it was enacted, amongst other things, by section one, that the maximum number of Judges of a High Court of Judicature in India, including the Chief Justice, should be twenty;

and, by Section two, that Our power under section sixteen of the Indian High Court Act, 1861, might be exercised from time to time and that a High Court might be established under the said section sixteen in any portion of the territories within Our Dominions in India, whether or not included within the limits of the local jurisdiction of another High Court; and that, where such a High Court was established in any part of such territories included within the limits of the local jurisdiction of another High Court, it should be lawful for Us by Letters Patent to alter the local jurisdiction of that other High Court, and to make such incidental, consequential and supplemental provisions as might appear to be necessary by reason of the alteration of those limits;

Recital of Acts 5 & 6 Geo. 5. C. 61.—And whereas the said Indian High Courts Act, 1861 and 1911, have been repealed and re-enacted by an Act of Parliament passed in the Fifth and Sixth Years of Our Reign, and called the Government of India Act, 1915;

Recital of creation of Province of Bihar and Orissa.—And whereas certain territories formerly subject to and included within limits of the Presidency of Fort William in Bengal were, by Proclamation made by the Governor-General of India on the Twenty- second day of March in the Year of Our Lord One thousand nine hundred and twelve, constituted a separate Province, called the Provinces of Bihar and Orissa, and are now governed by a Lieutenant-Governor in Council :

1. Establishment of High Court at Patna.—Now know yet that we, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents we do accordingly for Us, Our Heirs and Successors, erect and establish, for the Province of Bihar and Orissa aforesaid, with effect from the date of the publication of these presents in the Bihar and Orissa Gazette, a High Court of Judicature, which shall be called the High Court of Judicature at Patna, and We do hereby constitute the said Court to be Court of Record.

2. Constitution and first Judges of the High Court.—And we do hereby appoint and ordain that the High Court of Judicature at Patna shall, until further or other provision be made by Us, or our Heirs and Successors, in that behalf in accordance with section One hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Edward

Maynard Des Champs Chamier, Knight, and the six other Judges being Saiyid Shurfuddin, Esquire, Edmand Pelly Chapman, Esquire, Basanta Kumar Mullick, Esquire, Francis Reginald Roe, Esquire, the Hon'ble Cecil Atkinson and Jowala Prasad, Esquire, being respectively qualified as in the said Act is declared.

3. Declaration to be made by Judges.—And we do hereby ordain that the Chief Justice and previously to entering upon the execution of the duties of his every other Judge of the High Court of Judicature at Patna, office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor in Council may commission to receive it :—

“I, A,B, appointed Chief Justice (or a Judge) of the High Court of Judicature at Patna, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

4. Seal.—And We do hereby grant, ordain and appoint that the High Court of Judicature at Patna shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal arms, within an exergue or label surrounding the same, with this inscription, “The Seal of the High Court at Patna”. And we do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the Office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section One hundred and five of the Government of India Act, 1915; and we do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant, the said High Court shall be, and is hereby, authorised and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

5. Writs, etc. issue in name of the Crown and under seal.—And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Patna shall run and be in the name and style of Us, or of Our Heirs and Successors, and shall be sealed with the seal of the said High Court.

6. Appointment of officers.—And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Patna from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor in Council, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure, and We do hereby, for Us, our Heirs and Successors, give, grant direct and appoint, that all and every officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, may approve of :

Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so, long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor-General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Admission of Advocates, Vakils and Attorneys

7. Powers of High Court in admitting Advocates, Vakils and Attorneys.—And We do hereby authorize and empower the High Court of Judicature at Patna to approve, admit and enroll such and so many advocates, Vakils and Attorneys as to the said High Court may seem meet, and such Advocates, Vakils and

Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

8. Powers of High Court making rules for the qualifications, etc. of Advocates, Vakils and Attorneys.—And We do hereby ordain that the High Court of Judicature at Patna shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-Law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-Law; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

9. Extraordinary Original Civil Jurisdiction.—And We do further ordain that the High Court of Judicature at Patna shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purpose of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

10. Appeal to the High Court from Judges of the Court.—And We do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, One thousand nine hundred and twenty-nine, in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.

11. Appeal from other Civil Courts in province of Bihar and Orissa.—And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Courts of the province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

12. Jurisdiction as to Infants and Lunatics.—And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority with respect to the person and estates of infants, idiots and lunatics within the province of Bihar and Orissa as that which was vested in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents.

Law to be administered by the High Court

13. By the High Court in the exercise of extraordinary original civil jurisdiction.—And We do further ordain that, with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Patna in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court

having jurisdiction therein.

14. By the High Court in the exercise of appellate jurisdiction.—And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Patna to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction

15. Ordinary original criminal jurisdiction of the High Court.—And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents.

16. Jurisdiction as to persons.—And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

17. Extra-ordinary original criminal jurisdiction.—And We do further ordain that the High Court of Judicature at Patna shall have extra-ordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

18. No appeal from High Court exercising original jurisdiction. Court may reserve points of Law.—And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. High Court to review cases on points of law reserved, by one or more Judges of the High Court.—And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

20. Appeals from other Criminal Courts in the Province of Bihar and Orissa.—And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Criminal Courts of the Province of Bihar and Orissa, and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

21. Hearing of referred cases and revision of criminal trials.—And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa who were, immediately before the publication of these presents, authorized to refer cases to the High Court of Judicature at Fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were, immediately before the publication of these presents, subject to reference to or revision by the High Court of Judicature at Fort William in Bengal.

22. High Court may direct the transfer of a case from one Court to another.—And We do

further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal law

23. Offenders to be punished under Indian Penal Code.—And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the “Indian Penal Code” or by any act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Admiralty Jurisdiction

24. Civil.—And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such civil and maritime jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as was so exercisable by the High Court of Judicature at Fort William in Bengal.

25. Criminal.—And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such criminal jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, or otherwise in connection with maritime matters of prize.

26. Testamentary and intestate jurisdiction.—And We do further ordain that High Court of Judicature at Patna shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Province of Bihar and Orissa by the High Court of Judicature at Fort William in Bengal, in relation to the granting of Probates of Last Wills and Statements and Letters of Administration of the Goods, Chattels; Credits and all other effects whatsoever of person dying intestate : Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority of India, by which power is given to any other Court to grant such Probates and Letters of Administration.

Matrimonial Jurisdiction

27. Matrimonial Jurisdiction.—And We do further ordain that the High Court of Judicature at Patna shall have jurisdiction, within the Province of Bihar and Orissa, in matters matrimonial between Our subjects professing the Christian religion : Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letter patent within the said Province, which is lawfully possessed of that jurisdiction.

Powers of Single Judges and Division Courts

28. Single Judges and Division Courts.—And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judge and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Civil Procedure

29. Regulation of proceedings.—And We do further ordain that it shall be lawful for the High Court of Judicature at Patna from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the; provisions of the Code of Civil Procedure, being an Act, No. V of 1908, passed by the Governor- General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

Criminal Procedure

30. Regulation of proceedings.—And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, being an Act, No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council

31. Power to appeal in civil cases.—And We do further ordain that any person or persons may appeal to Us, Our Heirs and Successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the High Court of Judicature at Patna made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provision contained in the 10th Clause of these presents; provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000/- rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000/- rupees, or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our Heirs or Successors, in Our or their Privy Council; but subject always to such rules and orders as are not in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

32. Appeal from interlocutory judgments.—And We do ordain that it shall be lawful for the High Court of Judicature at Patna, at its direction, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, or any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our Heirs and Successors, in Our or their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

33. Appeal in criminal cases.—And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Patna, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner provided by the 18th Clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment order or sentence to appeal to Us, Our Heirs or Successors, in Council, provided the said High Court declares that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such

rules and orders as are not in force, or may from time to time made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

34. Rules as to transmission of copies of evidence and other documents.—And We do further ordain that, in all cases of appeal made from any judgment, decree order or sentence of the High Court of Judicature at Patna to Us, Our Heirs or Successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our Heirs and Successors, in Our or their Privy Council, a true and correct copy of all evidence, proceeding, judgments, decrees and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the High Court. And that the said High Court shall also certify and transmit to Us, Our Heirs and Successors, in our or their Privy Council, a copy of the reasons given by the Judges of such Court, of by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our Heirs or Successors, in Our or their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court

35. Judges to visit Orissa by way of circuit.—And We do further ordain that, unless the Governor General in Council otherwise directs, one or more Judges of the High Court of Judicature at Patna shall visit the province of Orissa, by way of circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Province the jurisdiction and power vested in the said High Court by or under the Government of India (Constitution of Orissa) Order, 1936 : Provided always that such visits shall be made not less than four times in every year, unless the Chief Justice, with the approval of the Governor of Bihar in Council, otherwise directs : Provided also that the said High Court shall have power from time to time to make rules, with the previous sanction of the Governor of Bihar in Council, for declaring what cases or classes of cases arising in the Province of Orissa shall be heard at Patna and not in that Province, and that the Chief Justice may, in his discretion, order that any particular case arising in the Province of Orissa shall be heard at Patna or in that Province : provided further that the approval and sanction of the Governor of Bihar in Council under the foregoing provision shall be subject to the control of the Governor-General in Council.

36. Special Commissions and circuits.—And We do further ordain that whenever it appears to the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these our Letters Patent or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit one or more judges of the Court shall visit such place or places accordingly.

37. Proceedings of Judges on special commission or circuit.— And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or the 36th Clause of these presents the proceedings in case before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Delegation of Duties to Officers

38. Power to delegate duties.—The High Court of Judicature at Patna may from time to time make rule for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and no-judicial duties.

Cessation of jurisdiction of the High Court of Judicature at Fort William in Bengal

39. Cessation of jurisdiction of the High Court of Judicature at Fort William over the Province

of Bihar and Orissa.—And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents, and that all proceedings pending in the former Court in the date in reference to any such matter shall be transferred to the latter Court :

Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

(a) In all proceedings pending in that Court on the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question; and

(b) in all proceedings [not being proceedings referred to in paragraph (a) of this clause] pending in that Court, on the date of the publication of these presents, under the 13th, 15th, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th or 35th Clause of the Letters Patent bearing date at Westminster the twenty-eight day of December, in the Year of Our Lord One thousand eight hundred and sixty-five, relating to that Court; and

(c) in all proceedings instituted in that Court, on or after the date of the publication of these presents, with reference to any decree or order passed or made by that Court :

Provided, secondly that, if any question arises as to whether any case is covered by the first proviso to this clause, the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final.

<P11B>Calls for Records, etc., by the Government<P255D>

40. High Court to comply with requisitions from Government for records, etc.—And it is Our further will and pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant-Governor in Council for records, return and statements, in such form and manner as he may deem proper.

<P11B>Powers of Indian Legislatures<P255D>

41. Powers of Indian Legislatures preserved.—And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council, under Section seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.

In witness whereof We have caused our Letters to be made patent.

Witness Ourselves at Westminster the Ninth day of February in the year of Our Lord One thousand nine hundred and sixteen and in the Sixth Year of Our reign.

By Warrant under the King's Sign Manual

(Signed) SCHUSTER

COMMENTS

Per majority view

CPC, Section 100-A.—Intent in introducing provision. The legislative intent in introducing the said provision was to minimize the delay in the finality of a decision by excluding the right to prefer a second appeal in the High Court from an order passed by a learned single Judge in an appeal from an original or appellate decree.—Satya Narayan Agiwal<%-2> v. State Bank of India, 2005 (3) JCR 1 (FB) : 2005 (3) JLJR 230.

<B%-2>Letters Patent Appeal.—From the judgment and decree of Single Judge passed in the First Appeal from the money suit—Maintainability of—Not maintainable and is barred by Section 100-A, CPC. Held, Letters Patent Appeal against the judgment and decree of the Single Judge in First Appeal from the money suit is not maintainable and is barred under Section 100-A, CPC.—Satya Narayan Agiwal & Anr. v. State Bank of India & Ors., 2005 (3) JCR 1 (FB) : 2005 (3) JLJR 230.

<BI>Per minority view

CPC, Sections 96, 100, 100-A, 104 and Order XLIII, Rule 1-A—Letters Patent Appeal.— Maintainability of—Against judgment and order passed by Single Judge exercising appellate jurisdiction under Section 104, CPC—Held—Unless High Court Rules is properly amended the right conferred under Letters Patent of the High Court cannot be taken away by a bar created under Section 100-A, CPC— Letters Patent Appeal maintainable.—Satya Narayan Agiwal & Anr. v. State Bank of India & Ors., 2005 (3) JCR 1 (FB) : 2005 (3) JLJR 230.

PART VIII

SCHEME FOR APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF THE HIGH COURT OF JHARKHAND

1. Short title.—This Scheme may be called the “Appointment of Arbitrators Scheme, 2001”.

2. Submission of request.—(1) Any request made to the Chief Justice of the High Court of Jharkhand in terms of sub-section (4), sub-section (5) or sub-section (6) of Section 11 of the Act shall be in the form of a petition, duly verified in the manner prescribed in Order 6, Rule 15 of the Code of Civil Procedure, 1908, for verification of the pleadings and shall contain the following information :—

(i) the names and address of all the parties to the arbitration agreement;

(ii) the names and address of the arbitrators already appointed, if any;

(iii) the name and address of the person or institution, if any, to whom or upon which any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by them;

(iv) the qualifications required, if any for the appointment of the Arbitrators under the agreement between the parties;

(v) a brief written statement describing the general nature of the disputes and the points at issue;

(vi) the relief or remedy sought;

(vii) any other information which the petitioner considers relevant or material to the case.

(2) Every such application shall be accompanied by :—

(i) the original arbitration agreement or a duly attested/certified copy thereof;

(ii) an affidavit supported by the relevant documents to the effect that the conditions, if any required or prescribed, to be satisfied under sub-section (4), sub-section (5) or sub-section (6) of Section 11 of the Act, before making the request to the Chief Justice, have been satisfied.

(iii) any other document which the petitioner considers is, or might be, required for proper disposal of the application.

3. Authority to deal with the request.—(1) Every application received in the Registry of the Court shall be placed before the Chief Justice, who may either deal with the matter himself, or entrust or transfer the same to any other person or institution for disposal.

(2) Nothing in sub-section (1) shall be construed as taking away the powers of the Chief Justice from passing a general order, at any time for designating persons or institutions to deal with any particular case or classes of cases.

(3) If an order under sub-section (2) has been passed, it shall be open to the applicant to file an application for request in terms of Section 2 of this Scheme to a person or Institution as designated shall proceed to dispose of every such application in accordance with this Scheme and the Act.

4. Procedure on receipt of the request.—Where the Chief Justice entrusts or transfers the matter to another person or institution under sub-section (1) of Section 3, he shall have the request alongwith the documents forwarded to such a person, or Institution and also have a notice sent to the parties to the arbitration agreement.

5. Seeking further information.—The Chief Justice or the person or the Institution designated by him under Section 3 may seek further information or clarification from the party making the request under this Scheme.

6. Rejection of request.—Where the request made by any party under Section 2 is not in accordance with the provisions of this Scheme, the Chief Justice or the person or the Institution designated by him may reject it.

7. Notice to affected persons.—Subject to the provisions of Section 6 of this Scheme, the Chief Justice or the person or the Institution designated by him shall direct that a notice of the request be given to all the parties to the arbitration agreement and such other person or persons as may seem to be affected by, or with such the request, to show cause within the time specified in the notice, why the appointment of the arbitrator or any other measure proposed to be taken should not be made or taken. Every such notice shall be accompanied by copies of all relevant documents, reply, if any, to such a show cause notice shall be filed on affidavit.

8. Withdrawal of authority.—If the Chief Justice, on receipt of a complaint from either party to the arbitration agreement or otherwise, is of opinion that the person or Institution designated by him under Section 3 has neglected or refused to act or is incapable of acting, or for any other reason, he may withdraw the authority given by him to such person or Institution and either deal with the request himself or designate another person or institution for that purpose.

9. Order on request.—The Chief Justice or any person or Institution designated by him shall thereafter consider the matter even if no reply is received within the time specified and shall pass orders making the appointment under sub-sections (4), (5) or (6) of Section 11 of the Act. Before making appointment or taking any other measure, it shall not be necessary to grant a personal hearing.

10. Intimation of action taken on request.—The appointment made or measure taken by the Chief Justice or any person or Institution designated by him in pursuance of the request under Section 2 of this scheme shall be communicated in writing to :—

- (a) the parties to the arbitration agreement;
- (b) the arbitrators, if any, already appointed by the parties to the arbitration agreement;
- (c) the person or the institution referred to in Section 2(1)(iii) of this Scheme, if so required;
- (d) the arbitrator appointed in pursuance of the request.

11. Request and communications to be sent to registrar.—All requests under this Scheme and Communications relating thereto which are addressed to the Chief Justice shall be presented to the Registrar General or any other Officer of this Court so appointed for this purpose, who shall maintain a separate Register of such requests and communications.

12. Delivery and receipt of written communications.—The provisions of sub-sections (1) and (2) of Section 2 of the Act as far as possible apply to all written communications received or sent under this Scheme.

13. Costs for processing requests.—Every application filed under this Scheme shall be accompanied by a Court fee amounting to Rs. 500/-.

14. Interpretation.—If any question arises relating to any reference to the Interpretation of any provision of this Scheme, such a question shall be referred to the Chief Justice whose decision shall be final.

15. Power to amend the scheme.—The Chief Justice may, from time to time, amend, by way of addition or variation, any provision of this Scheme.

PART IX

APPENDIX A

Appendix of Saleable Forms under Rule 272, Chapter XXIII

[J.H.C. Sch. VI—3]

Space for Thirty paise Space for
Searching fee Court-fee on application Expedition fee

Serial No.....

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Application for <\$Eroman {Urgent} over {Ordinary}> Copy.

*.....No. of 20.

*Here state class of case, e.g., S.A., L.P.A. etc.....<\$Eroman {Appellant} over
{Petitioner}>

Versus

.....<\$Eroman {Respondent} over {Opp.
Party}>

Description of document of which copy is wanted with date, where necessary :—

Application is made by..... the undersigned, for copy of the marginally named document
from the <\$Eroman {High~Court} over {Lower~Court}> file in the above case which <\$Eroman
{was~disposed~of~on...} over {is~still~pending}> The following stamps and stamped sheets are filed :—

Dated :.....20 Signature and description of applicant.

The copy will cover.....

Vernacular

English sheets.

Date.....Assistant.

Typists report. Short folios and stamps notified on...

Total No. of folios used Total amount of Ex. fee Rs..... No. of folios returned.....

Date..... typists., (Excluding what has been filed)

Rs. Paisa

stamped sheets at 0.35.....Court-fee stamps

Extra stamp for urgency

Searching fee in stamp....

Total Rs....

Date Section Officer, Estimated stamps,, etc.

notified on.....

Supplied on.....

Applicant Record received on..... Copy will be ready on..... copy actually ready on....

Copy delivered on.....

Serial No.

Received an application for copy bearing the above number.

Section Officer.

Date 20

Estimated stamps and sheets

valued at Rs. Paisa Received copy on.....with

Supplied on..... unused stamps and sheets valued at Rs. Paise.

To attend for copy on.....

Applicant.

Note.—The application will not be considered as complete until stamps and costs have been supplied in full, which must, be done within seven days of the date of the estimate. All enquiries and complaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

[J.H.C. Sch. VI—4]

Application for information

Number and date, Name and residence of applicant, Nature of the information required, Date on which the information is to be ready, Signature of the officer receiving the application, Remarks

1, 2, 3, 4, 5, 6

, ,

, , ,

Number and date, Name and residence of applicant, Nature of the information required, Date on which the information is to be ready, Signature of the officer receiving the application, Remarks

1, 2, 3, 4, 5, 6

, ,

,

, ,

Note.—The person applying for information is to fill up columns 1 [excepts the Nos. 2 and 3] and present it to the officer appointed to receive such applications, who, if the information required cannot be

immediately supplied, will fill up, tear off, and return the bottom part of the form to the applicant.

[J.H.C. Sch. VI—1(a)]

JHARKHAND HIGH COURT

Chalan for Deposit of Money with Cashier

(To be filled up by the applicant)

I. Number, class and year of the case in which money is to be deposited.....

.....Appellant

II. Name of parties versus

(first names only)Respondent

III. Name of person on whose behalf money is tendered.....

IV. Nature of deposit.....

V. Amount tendered (in words and figures).....

VI. By whom tendered.....

Signature of Advocate.

Cashier's memo.

Date of deposit.....

No. of deposit.....

Accountant. Cashier. Signature of person tendering money.

N.B.—Deposit must be made between the hours of 10.30 A.M. and 3 P.M. No deposit will be received by the Cashier after 3 P.M.

[J.H.C. Sch. VI—2]

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Application for refund of Deposit

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

.....Appellant.

Versus

.....Respondent.

Name of applicant, Nature of deposit, Date and No. of deposit, Amount claimed, +, Name of the person to whom payment is to be made (vide Jharkhand High Court Rules,,

Chap. XV)

^, ^, ^, Rs., Paise, ^

, , , , ,

ACCOUNTANT'S REPORT

Signature of applicant

or his Advocate

Accountant.

SECTION OFFICER'S REPORT

Authentication or counter-signature where necessary

REGISTRAR GENERAL'S ORDER

SECTION OFFICER

REGISTRAR GENERAL

Passed for

by Repayment order.

No.....dated.....

Accountant

Deputy Registrar.

[J.H.C. Sch. VI—5]

IN THE COURT OF JHARKHAND AT RANCHI

FIRST APPEAL No.....of 20

Appellants.

Versus

Respondents.

List of papers to be inserted in the Paper-Book on behalf of the.....in the above named appeal.

Number on the record, Mark (if any) in the Court below, Description and date of paper, Whether the whole or portion is to be inserted in the paper-book, Number of words

RANCHI

Signature of Advocate for

Dated

(N.B.—If a portion is to be inserted it shall be marked.)

[J.H.C. Sch. VI—6]

MEMO

Versus

<F1MJ168><\$Eroman {(a)~Appearance~for} over {(b)~Paper- Book~for}>

To,

The Deputy Registrar of the

High Court of Jharkhand at Ranchi

.....<\$Eroman {Appellant} over {Petitioner}>

Versus

.....<\$Eroman {Respondent} over {Opp.~Party}>

Sir,

I have the honour to state that I have been authorised by..... to appear on behalf of the.....in the above mentioned case and to request that—

(a) the fact may be noted.

(b) a copy of the paper-book may be supplied to me.

RANCHI

Your's faithfully,

Advocate for.....

Note.—Separate forms to be used for (a) and (b) and the unnecessary clause scored out.

[J.H.C. Sch. VII—1]

APPENDIX B

APPENDIX OF ACCOUNT FORMS & REGISTERS UNDER RULE 273, CHAP. XXIII

REGISTER OF DEPOSITS RECEIVED IN THE HIGH COURT OF JHARKHAND

Date of receipt, No. of each deposit, From whom received, Nature of deposit, Amount of each deposit

Rs., Paise

Initial of D.R., Daily total carried to Cash Book, Date, Amount of each Repayment, +, Initial of D.R.,
Date

Rs., Paise, ,

IN THE MONTH OF.....20.

Details of Repayment,

Amount of each Repayment, +, Initial of D.R., Date, Amount of each Repayment, +, Initial of D.R.,
Date, Amount of each Repayment, +, Initial of D.R.

Rs., Paise, ^, ^, Rs., Paise, ^, ^, Rs., Paise, ^

Total Repayment, +, Balance carried to clearance register, +, Lapsed and credited
to Government, +

Rs., Paise, Rs. , Paise, Rs., Paise

, , ,

[J.H.C. Sch. VII—6]

REGISTER OF RECEIPTS OF THE HIGH COURT OF JHARKHAND

AT RANCHI

NATURE OF THE RECEIPTS TO BE CREDITED TO GOVERNMENT

Date, Number of entry, Number of case, Person from whom received, Fines, Deficit printing cost,
Miscell- aneous, Sale proceeds of Paper Books, Total, Signature of Deputy Registrar

1, 2, 3, 4, 5, 6, 7, 8, 9, 10

, , , , , , , ,

REGISTER OF PAYMENT ORDERS ISSUED BY THE HIGH COURT OF JHARKHAND AT RANCHI

MONTH OF.....20.

Date, Consecutive number of payment order, To whom paid, Number and date of item in the Register
of Receipts against which the payment is to be made, Amount to be paid, +, +, +

^, ^, ^, ^, In cash, +, By transfer, +

1, 2, 3, 4, 5, +, 6, +

, , , , Rs., Paise, Rs., Paise

''''

Initials of Deputy Registrar, Date of payment by Collector, Initials of Deputy Registrar, Remarks
7, 8, 9, 10

''

Note.—After the receipt of the Treasury advice for the last day of the month, the monthly total of this Register should be compared with the monthly totals of the Register of Repayments of Deposits. The difference, if any, will be due to orders granted, but not cashed, and the amount of those which have lapsed should be written off.

[J.H.C. Sch. XXV—153]

SCHEDULE NO. 9

[C.A.C. Form 30]

<BI>Register of Repayments of

Date of receipt, Number as per Register of Receipts, Amount of balance of Deposit, +

<BI>Deposits at

Date of present repayment, Number of Repayment voucher, To whom repaid, Whether paid in cash
or by transfer, Amount
repaid, +

''''

Treasury of
Initials of, +, Daily total carried to cash book, +
Accountant, Treasury or Disbursing Officer, ^, ^

N.B.—The same form will serve for the list of repayments submitted each month, a single column “Amount repaid” should be substituted for the 2 sub-columns, ‘in cash’ and ‘by transfer’ and the last four columns as well as columns 4 and 6 may be struck out by hand and the heading of the form changed to ‘List of repayments of, etc.’

[J.H.C. Sch. VII—10]

<BI>Ledger of security deposit.....High Court—Appellate Side

No.....

Name.....

Date of
deposit, Amount deposited, +, +, +,

Initials of, +

^, In Government promissory notes, +, +, +, ^, ^

^, No. and year, Amount, Name of endorser, In cash, ^, ^

, , , , Accountant Registrar, +

,

, , , , +

<BI>Interest account on above

Date of payment order, No. of cheque, To whom paid, Particulars of interest order, Initial of Registrar,

Signature of payee

[J.H.C. Sch. VII—5]

GENERAL CASH BOOK, JHARKHAND HIGH COURT RECEIPTS

Date, Nature of receipts, No. of items, Amount, +, +, +, Daily total, itial of
Accountants, Remarks

Judicial Deposits, +, Other Receipts, +, ^, ^, ^, ^

1, 2, 3, 4, +, 5, +, 6, +, 7, 8

, , , Rs., Paise, Rs., Paise, Rs., Paise, ,

, Opening Balance

Judicial Deposits

Fines.....

Sale of Paper-books

Sale of form.....

Cash receipts by M.O.

Miscellaneous.....

Total....., , , , , , , , ,

Cashier
Deputy Registrar
GENERAL CASH BOOK, JHARKHAND HIGH COURT.
DISBURSEMENTS

Date, Nature of payment, No. of voucher, Amount, +, +, +,
Daily total, +, Initial of Accountants, Rem-
arks

^, ^, ^, Judicial Deposits, +, Other

Disburse-
ments, +, ^, ^, ^, ^

1, 2, 3, 4, +, 5, +, 6, +, 7, 8

, , , Rs., Paise, Rs., Paise, Rs., Paise, ,

, Remitted to State Bank of India :—

(1) By paid vouchers.

(2) By Cash.....

Contingencies.....

G.C. Allowance Establishment Pay.

, , , , , , , , ,

,

Judicial Deposits etc.....

Permanent Advance.....

Establishment pay.....

Grain Comp. Allowance.....

R.T. Receipts an Bank Draft.

Travelling allowance.....

Money Order receipts.....

, Rs., Paise, , , , , ,

, Total, Closing Balance, +, , , , ,

, +, +, +, Total, +, , , , ,

Cashier

Deputy Registrar

[J.H.C. Sch. VII—7]

PASS BOOK JHARKHAND HIGH COURT

Dr.

Cr.

PAYMENT AND REMITTANCES FROM THE COURT

Date of payment, Court's number of repayment vouchers, Particulars of payments, Amount, +, Signature of the Agent,, State Bank or T.O.

Rs., Paise, ^

Cash remittance from the Court., , ,

Treasury Officer

Agent

, , Total ... , , ,

Date of Receipt, Particulars of Receipts, Head of account under which to be scheduled at Treasury, Amount, +, Signature of the Treasury Officer.

, , , Rs., Paise,

, High Court

Deposit

RECEIPTS

Sale-proceeds of paper-books

Sale proceeds of Forms.....

Sale of old stores, etc.....

Miscellaneous

(other items).

, Judicial Deposit

XVII—Administration of justice.

Miscellaneous. , , ,

, , Total , , ,

RANCHI

Deputy Registrar

The 20.

JHARKHAND High Court

[J.H.C. Sch. VII—8]

Register of Money orders received

Serial numbers, Date, Number of money order with dates, Name of remitter, Station or post town, Amount, Daily total, Signature of Deputy Registrar, Signature of treasurer, Date of disposal of transfer to other heads, How disposed of

[J.H.C. Sch. VII—9]

<BI>Register of saleable forms

Date, Application for copy, Price, Application by Counsel, Price, Application for refund, Price, Chalans, Price, Chalans, Price, Application for information, Price, List, Price, Total value, Signature of Deputy Registrar

<BI>Register of payments made in Court

Number of repayment order, Date of order, Amount paid, Date of payment, To whom paid, How identified, Signature of Cashier, Signature of recipient

APPENDIX C

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Court's Certificate to Witnesses

Certified that : (1)
(2).....appeared before the Court as a witness on behalf of.....
in.....case no. of..... for.....days
from..... to.....in his official/private capacity to depose to facts within his
(3).....knowledge, and that he has been paid (4) the undermentioned allowances :—

As Travelling allowance Rs.

As halting allowance Rs.

A sum of Rs..... has been deposited as his pay.

Date.....

Deputy Registrar

(1) Name, (2) Designation, (3) Here state whether official or private, (4) If nothing is paid under either head, it should be clearly stated.

APPENDIX C-I

FORM NO. 1

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Original Jurisdiction)

Inventory

(Chapter XIV, Rule 138)

To be filed within six months from the grant of Probate or Letters of Administration (Under Section 317 of the Indian Succession Act) :—

Property in possession of executor or administrator, +, +, +, +, +, <MJ29>Credits<DJ0>, +, +

Immovable property, +, +, +, Movable property, +, ^, ^, ^

Description, Government revenue payable

(if any), Recorded rental

(if any), Estimated market value, Description, Estimated value, Amount due to estates, From whom due, Nature of security

(if any)

1, 2, 3, 4, 5, 6, 7, 8, 9

Debits, +, +, Property bequeathed by will of deceased, +, +

Amount due, To whom due by estate, On what account, Amount or value, To whom bequeathed,

Remarks

10, 11, 12, 13, 14, 15

Note.—This inventory must be verified in the manner prescribed by Rule 138.

APPENDIX C-I

FORM NO. 2

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Original Jurisdiction)

Account

(Chapter XIV, Rule 138)

To be filed within one year from the grant of Probate or Letters of Administration (Under Section 317 of the Indian Succession Act).

Assets, +, +, +, +, Application for disposal of assets, +, +, +, +

Property in possession of executor under the inventory Form No., Income from such property, Credits realised out of those entered in the inventory, Other assets or credits recovered or realised, Total assets which have come into the hands of executor or administrator up to date of filing the account., Debts paid out of those entered in the inventory, Legacies paid out of those entered in the inventory, Others payments made,

Total payments made, Remarks
1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Note.—This account must be verified in the manner prescribed by Rule 138.

APPENDIX CC

Vide Rule 355 Chapter XXX

Form of Notice

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Appellate Jurisdiction

Civil Side

CIVIL REFERENCE NO. OF.....

Under the Chartered Accountants Act, 1949

(Act XXXVIII of 1949)

The Council of the Institute of
Chartered Accountant of India.....Referring Authority.

Versus

Respondents

To,

(1), Member of the..... Institute..... the
Respondents above named.

(2) The Secretary to the Council of the Institute of Chartered Accountants of India.

(3) Secretary to the Government of India (Ministry of Finance), New Delhi.

(4) Chief Secretary to the State Government concerned.*

Whereas the Council of the Institute of Chartered Accountants of India has forwarded to this Court its findings, dated the.....20 ., and the report of the Disciplinary Committee, dated the.....20 ., in the abovementioned case ;

Now, therefore, take notice that the.....day of....., has been fixed for hearing and that the case will be laid before the Court for the said purpose on that date or as soon thereafter as the business of the Court will permit.

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

By order of the Court.

Deputy Registrar.

* To be scored out in case the commplaint has not been lodged by the State Government.

APPENDIX-I

ADVOCATES (REMOVAL OF DIFFICULTIES)

ORDER, 1963

S.O. 2510, dated the 31st August, 1963.—In exercise of the powers conferred by sub-section (1) of Section 59 of the Advocates Act, 1961 (25 of 1961), the Central Government hereby makes the following Order, namely :—

1. Short title and commencement.—(1) This Order may be called the Advocates (Removal of Difficulties) Order, 1963.

(2) It shall come into force on the 1st day of September, 1963.

2. Definitions.—In the Order,

(a) “Act” means the Advocates Act, 1961;

(b) “appointed day” means the date on which Chapter V of the Act comes into force;

(c) “existing advocate” means a person who was enrolled as Advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926) and who, at the time when any proceeding in respect of any disciplinary matter is initiated against him, is not enrolled as an Advocate on a State roll under the Act.

3. Removal of certain difficulties.—(1) As from the appointed day, every proceeding in respect of any disciplinary matter in relation to an existing Advocate of a High Court shall, save as provided in sub-clause (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing Advocate has been enrolled as an advocate on its roll.

(2) If immediately before the appointed day, there is any proceeding in respect of any disciplinary matter in relation to an existing Advocate pending before any High Court under the Indian Bar Council Act, 1926 (38 of 1926), such proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under Cl. (c) of sub-section (1) of Section 56 of the Act :

Provided that where in respect of any such proceeding the High Court has received the finding of a Tribunal constituted under Section 11 of the Indian Bar Councils Act, 1926 the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all the powers conferred on it under Section 12 of the said Act, as if that section has not been repealed by the Act :

Provided further that where the High Court has referred back any case for further inquiry under sub-section (4) of Section 12 of the said Act, the proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under Cl. (c) of sub-section (1) of Section 56 of the Act.

(3) If immediately before the appointed day there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil or attorney, who has been enrolled as an Advocate on any State roll under the Act, such proceeding shall stand transferred to the State Bar Council on the roll of which he was enrolled and be dealt with under the Act as if it were a proceeding arising against him thereunder.

APPENDIX-II

ADVOCATES (REMOVAL OF DIFFICULTIES)

NO. 2 ORDER, 1963

S.O. 3553, dated the 21st December, 1963.—In exercise of the powers conferred by Section 59 of the Advocates Act, 1961 (25 of 1961), the Central Government hereby makes the following Order, namely :—

1. Short title and commencement.—(1) This Order may be called the Advocates (Removal of Difficulties) No. 2 Order, 1963.

(2) It shall be deemed to have come into force on the 1st day of October, 1963.

2. Extension of term of office of elected members of State Bar Councils.—The elected members of State Bar Council constituted for the first time shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of the Advocates Act, 1961 (25 of 1961).

APPENDIX-III
ADVOCATES (REMOVAL OF DIFFICULTIES)
ORDER, 1966

S.O. 162, dated the 10th January, 1966.—In exercise of the powers conferred by Section 59 of the Advocates Act, 1961 (XXV of 1961), the Government hereby makes the following Order, namely :—

1. Short title and commencement.—(1) This Order may be called the Advocates (Removal of Difficulties) Order, 1966.

(2) It shall be deemed to have come into force on the 1st day of November, 1965.

2. Extension of term of office of elected members of State Bar Councils required to retire under Section 8 of the Advocates Act, 1961.—Every elected member of a State Bar Council due to retire after the 1st day of November, 1965 under Section 8 of the said Act on the expiration of the second year from the date of such reconstitution shall, notwithstanding such expiration, continue to hold office for a further period of one year with effect from the date of such retirement.

APPENDIX-IV
ADVOCATES (REMOVAL OF DIFFICULTIES)
ORDER, 1968

S.O. 740, dated 23rd February, 1968.—Whereas difficulty has arisen in giving effect to the provisions of the Advocates Act, 1961 (25 of 1961) in the Union territory of Delhi consequent on the abolition of the office of Additional Solicitor-General of India.

Now, therefore, in exercise of the powers conferred by Section 59 of the Advocates Act, 1961 (25 of 1961), the Central Government hereby makes the following Order, namely :—

1. Short title and commencement.—(1) This Order may be called the Advocates (Removal of Difficulties) Order, 1968.

(2) It shall come into force at once.

2. Construction of references to Additional Solicitor-General of India.—Until other provision is made in this behalf, the references to the Additional Solicitor-General of India in Cl. (a) of sub-section (2) of Section 3, and the Explanation to Section 35 of the Advocates Act, 1961 (25 of 1961), shall be construed as reference to the Solicitor-General of India.

APPENDIX-V
ADMISSION AS ADVOCATES (EXEMPTION FROM TRAINING AND EXAMINATION) RULES, 1965

S.O. 3917, dated 5th December, 1965—Published in Gazette of India, Extra-ordinary, dated 15th September, 1965.—Whereas on account of diverse circumstances caused by the emergency, particularly in the border States, difficulties have been experienced by persons who obtained their degree in law from any University in India in an examination held during the year 1965, as well as by barristers who were called to the Bar during that year, in undergoing training and passing an examination as required under Cl. (d) of sub-section (1) of Section 24 of the Advocates Act, 1961 (25 of 1961).

Now, therefore, in exercise of the powers conferred by Cl. (d) of sub-section (2) of Section 49-A of the said Act, the Central Government hereby makes the following rules, namely :—

1. These rules may be called the Admission as Advocates (Exemption from Training and Examination) Rules, 1965.

2. Every person who has obtained a degree in law from any University in India on the results of an examination held before the 31st day of December, 1965, and every barrister who was called to the Bar before such date, shall be exempt from undergoing a course of training and passing an examination as required under Clause (d) of sub-section (1) of Section 24 of the Advocates Act, 1961 (25 of 1961).

APPENDIX-VI

ADMISSION AS ADVOCATES (TRAINING AND EXAMINATION) RULES, 1968

S.O. 926, dated 8th March, 1968—Published in the Gazette of India, Extra-ordinary, dated 8th March, 1968.—In exercise of the powers conferred by Section 49-A of the Advocates Act, 1961 (25 of 1961), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Admission as Advocates (Training and Examination) Rules, 1968.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Requirement as to training in law and passing an examination.—A person who obtains a degree in law (hereinafter referred to as the said degree) as is referred to in Cl. (c) of sub-section (1) of Section 24 of the Advocates Act, 1961, shall not be qualified to be admitted as an Advocate unless he—

(a) undergoes for a period of one year the course of training in law; and

(b) passes the examination, prescribed under Cl. (d) of the said sub-section.

3. Exemption from training and examination.—Notwithstanding anything contained in Rule 2, the following categories of persons shall be exempt from undergoing the said course of training and passing the said examination, namely :—

(a) persons who have obtained or obtain said degree, being a master's degree or any higher degree;

(b) persons who have obtained or obtain the said degree after undergoing a course of studies in law, the duration whereof is not less than three academic years;

(c) persons who have obtained or obtain the said degree on the results of an examination held on or before the 31st day of December, 1968**Ins. by S.O. 1560, dated 18th April, 1969. [including persons who have obtained or obtain the said degree after undergoing a course of studies in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year;] and

(d) barristers called to the Bar on or before the **Subs. by S.O. 4101, dated 30th December, 1970. [31st day of December, 1970]

APPENDIX-VII
ADVOCATES (RIGHT TO TAKE UP LAW TEACHING)
RULES, 1979

G.S.R. 587 (E), dated 24th October, 1979—Published in the Gazette of India, Extra-ordinary, dated 26th October, 1979.—In exercise of the powers conferred by Section 49-A of the Advocates Act, 1961 (25 of 1961), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Advocates (Right to take up Law Teaching) Rules, 1979.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Definitions.—In these rules “Act” means the Advocates Act, 1961 (25 of 1961).

3. Right of practising Advocates to take up law teaching.—(1) Notwithstanding anything to the contrary contained in any rule made under the Act, an Advocate may, while practising, take up teaching of law in any educational institution which is affiliated to a University within the meaning of the University Grants Commission Act, 1956 (3 of 1956), so long as the hours during which he is **Subs. by G.S.R. 651 (E), dated 23rd November, 1979. [so engaged] in the teaching of law do not exceed three hours in a day.

(2) When any Advocate is employed in any such educational institution for the teaching of law, such employment shall, if the hours during which he is so engaged in the teaching of law do not exceed three hours, be deemed, for the purposes of the Act and the rules made thereunder, to be a part-time employment irrespective of the manner in which such employment is described or the remuneration receivable (whether by way of a fixed amount or on the basis of any time scale of pay or in any other manner) by the Advocate for such employment.

APPENDIX-VIII
BAR COUNCIL OF INDIA TRAINING RULES, 1995

(Rules made by the Bar Council of India in exercise of its rule-making powers under Section 24(3) (d) of the Advocates Act, 1961)

1. These rules may be called ‘Bar Council of India Training Rules, 1995 for enrolment as an Advocate on the roll of a State Bar Council which shall come into effect on 2nd April, 1996.

2. No person shall be entitled to be enrolled as an Advocate unless he is eligible to be enrolled as such under Section 24 of the Advocates Act, 1961 and has undergone training as prescribed under these Rules.

3. (1) A duly qualified candidate to be enrolled as an Advocate shall have to file application for enrolment as prescribed under Section 25 of the Advocates Act, 1961 after payment of prescribed fee for enrolment and the said candidate shall have to deposit a Bank draft of Rs. 150/- (Rupees one hundred fifty only) in favour of State Bar Council of India in addition to enrolment fee, for imparting training in prescribed form with all relevant documents as has been prescribed under the Advocates Act and the Rules made thereunder.

The following particulars in capital letter shall be supplied by the candidates applying for training in addition to information required for enrolment :

(a) Name

- (b) Father's Name
- (c) Date of Birth
- (d) Nationality
- (e) Detail of degree of graduation or certificate of having passed 10+2 examination whichever is applicable and degree of law.
- (f) Date of declaration of result of degree in law.
- (g) Name, address and enrolment number of the guide under whom he has to receive training
- (h) Photostat copies of the Bachelor's degree or of certificate of passing the 10+2 examination, whichever is applicable and degree in law and in case the degree in law has not been awarded then a photostat copy of the third year marks sheet and provisional certificate shall be enclosed with the application for training in addition to documents required for enrolment.

4. The period of training shall commence from the date of certificate of the guide that the candidate has started training with him but such date shall be subject to the approval of the name of the guide by the State Bar Council.

5. An Advocate having 15 years of practice at Bar or designated Senior Advocate, who are in continuance active practice in a Court established by law shall be eligible to impart training and be called "guide" and name of guide shall be approved by the state Bar Council. The guide shall have to give his written consent before he would be approved as a guide :

Provided in case of non-availability of Advocates of 15 years practice at the Bar, the State Bar Council concerned may relax this requirement and allow Advocates having 10 year's practice to become guides under intimation to the Bar Council of India.

6. No guide shall have, at a given time, more than 3 trainees working under him, except with the previous permission in writing of the State Bar Council.

7. Every candidate shall be bound to receive training for the period of one year under the same guide, except where the guide has died before the expiry of the period of one year or has ceased to practice or for any other reasonable ground which the State Bar Council may deem fit and proper and in such case the candidate shall receive training for the remaining period with another guide whose name may be approved by the State Bar Council afresh on a written intimation to the aforesaid effect by the candidate.

8. During the period of training the candidate shall regularly attend the chamber or office of the guide, study case-papers, correspondence, draft pleadings, attend Courts and in particular study cases with a view to get acquainted with the practice in Courts and minimum attendance for 225 days in all in Courts and chambers in a year shall be a condition precedent for the successful completion of training.

9. (a) Every candidate shall maintain two diaries in the form approved by State Bar Council. One for work done in chambers and the other for work in Courts. The chamber diary shall contain day to day record of the work done by candidate in guide's chambers giving briefly the facts of the cases, studies of plaints, written statements, affidavits, grounds of appeal or revision etc. read and other matters looked into. The Court diary shall contain the date, the number of the cases attended, the arguments, the case law cited and the result.

The candidate shall write out on the first page of each of his diaries, his name, serial number, the name of the guide, the place of training and the date of commencement of the training. The candidate shall also not separately in the second page of chambers diary the date of absence from chambers or Court, the dates despatch of the statements referred to in the rules hereunder and other important particulars connected with his training.

(b) Every candidate shall submit his Courts and chambers diaries to the guide for scrutiny atleast twice a month on or before the 5th and 20th of each month and obtain his signature with the dates in the chambers and Courts diaries.

(c) The diary maintained by the candidate duly signed by him and the guide after the completion of training be sent to the State Bar Council which shall be scrutinised by Enrolment Committee of the State Bar

Council and in case of Enrolment Committee of the Bar Council is satisfied that the candidate has not undergone full and proper training in compliance with the rules, the State Bar Council may extend the period of training as it may deem fit in the interest of legal profession.

During the period, however, when the Courts where the guide is practising are closed of summer recess or other recess, it shall be sufficient if the signatures of the guide are obtained in the diaries a week before such recess and again a week after the re- opening but 225 clear days training in any case shall be strictly made applicable. The number of days has been fixed considering the facts that Court are closed in different vacations and thus the number of days for training has been reduced to 225 days only.

10. No candidate shall engage himself in any employment, profession, business, trade or calling during the course of training in any manner.

11. A guide from whom the candidate would receive training shall intimate to the Bar Council in writing the non-attendance of a candidate in training.

12. The Secretary of the State Bar Council shall maintain a separate register in which he shall enter the names of the candidates undergoing training in law with his address and the name and address of the guide concerned, the date of intimation and approval and the date of the actual commencement of receiving training.

13. The State Bar Council may provide for lectures to be delivered by its members, legal luminaries, jurists on professional ethics and other topics at suitable place in the State, the attendance of trainees in such lectures be deemed to be a part of the training and shall be compulsory except on special cause to be shown.

14. These Training Rules would be applicable to the persons applying for enrolment as an Advocate who had worked for a minimum period of one year as Judicial Officer/Prospectors/Vakils/pleaders/Mukhtars.

15. That any decision of a State Bar Council under these rules shall be subject to appeal before the Council of India.

<P11M>APPENDIX-IX

THE JHARKHAND HIGH COURT OFFICERS AND THE MEMBERS OF STAFF (RECRUITMENT, CONDITIONS OF SERVICE, CONDUCT AND APPEAL) RULES, 2003

JHARKHAND H.C. OFFI. & THE MEM. OF STAFF (RECRUIT.....APPEAL) RULES, 2003

Notification No. 4/Accounts, dated 24th December, 2002— Published in Jharkhand Gazette Extraordinary No. 390, dated 24th December, 2002.—In exercise of the powers conferred by Clause (2) of Article 229 of the Constitution of India and all other enabling provisions in this behalf and in supersession of all Rules, Regulations, Notifications and Orders etc. on the subject. I, Vinod Kumar Gupta Chief Justice of the High Court of Jharkhand hereby make the following rules with respect to recruitment, conditions of service, conduct and appeal of persons serving in the Establishment of the High Court of Jharkhand.

PART I

1. Short title and commencement.—(i) These rules may be called “The Jharkhand High Court Officers and the Members of the Staff (Recruitment, Conditions of Service, Conduct and Appeal) Rules, 2003.

(ii) These rules shall apply to all Officers and Members of the Staff of the Establishment of the High Court of Jharkhand. They shall come into force with effect from the 1st day of January, 2003.

2. Definitions.—In these rules, unless the context otherwise require :

(a) ‘Board’ means any recognized Institution conducting examinations up to intermediate standard or awarding diplomas as may be declared by the Chief Justice to be so recognized for the purpose of these rules.

(b) ‘Chief Justice’ means the Chief Justice of Jharkhand High Court.

(c) ‘Commission’ means the Jharkhand Public Service Commission.

(d) 'Constitution' means Constitution of India.

(e) 'Court' means the Jharkhand High Court.

(f) 'Establishment' includes all Offices, Departments, Sections, Branches and other ancillary Unit and Wings of the High Court of Jharkhand.

(g) 'Governor' means the Governor of the State of Jharkhand.

(h) 'Member of the Establishment' means a person appointed in accordance with these rules or the rules or orders in force prior to the commencement of these rules, but does not include Officers appointed by way of deputation.

(i) 'Member of the Staff' means and includes the employees/officials working in the Establishment of the High Court, other than Officers and also includes all Class III and Class IV employees.

(j) 'Officers' means Officers appointed from amongst the members of the Staff of the Court and include Officers on deputation.

(k) 'Schedule' means the schedule appended to the rules.

(l) 'University' means any University incorporated by law in India and recognized as such, or any other University/Institution which is declared by the Chief Justice to be a University, for the purpose of these rules.

PART II

3. The High Court Establishment.—(i) The Establishment of the High Court shall comprise of various posts classified and categorized in the Schedule appended to these rules.

(ii) The Chief Justice may from time to time create more or additional number of posts in any class or category on permanent regular basis, temporarily or otherwise.

(iii) The Chief Justice may, at his discretion either not fill up any post or vacancy, and the non-filling up of any post or vacancy shall not give rise to any claim by any person.

4. Appointing Authority.—(i) The Chief Justice shall be the Appointing Authority for all Class I, Class II and other Gazetted posts borne on the Establishment of the Court.

(ii) The Registrar General shall be the Appointing Authority with respect to other posts, including Daily Wages employees. However, before issuing such appointment orders, he shall obtain the prior approval of the Chief Justice.

5. Appointment of persons in the establishment of the Court.—Appointment of members of the Establishment and members of the staff, meaning thereby persons in various classes and categories in the Establishment of the court shall be made :—

(a) by deputation ;

(b) by direct recruitment ;

(c) by promotion ; or

(d) by absorption,

the manner as indicated against every such post or class or category of posts in the schedule.

6. Pay and Allowances.—The persons borne on the Establishment of the Court shall draw such pay, allowances and perquisites as are indicated in the Schedule or as may be fixed or prescribed from time to time by the Chief Justice.

7. Eligibility.—A person shall not be eligible for appointment in the Establishment of the Court in any post unless he possesses the qualifications and fulfils the requirements of such appointment as are indicated in the schedule.

8. Age.—(A) The lower or upper age limits of candidates for appointment in the establishment through direct recruitment shall be either as applicable to the corresponding employees of the Government or as may specifically be fixed or prescribed by the Chief Justice.

(B) The Chief Justice may in exceptional cases relax upper or lower age limits.

9. Seniority.—(A) The seniority of a Member of the Staff, or a Member of the Establishment, other than the Officers on deputation, shall be determined by the date of his first appointment in service, cadre, class

or category in which he is appointed.

Explanation.—The words “date of first appointment” as occurring in this Rule means the date of first substantive appointment ; meaning thereby the date of first appointment on probation or otherwise, but on a clear vacancy, confirmation being subject to good work and conduct and/or passing of any Examination or Test as may be prescribed.

(B) Inter se seniority of two or more persons appointed on the same posts in a class or category of the Establishment simultaneously will, notwithstanding the fact that they may join or assume duties of their appointment on different dates, shall be determined :—

(i) in the case of those promoted, by their relative seniority in the lower service, class, category or grade ;

(ii) in the case of those recruited directly, according to the positions attained by and assigned to them in order of merit in the Competitive Examination as is determined and declared by the Court, and

(iii) in any class or category of posts which provides for appointment both by promotion as well as direct recruitment, the promotees enable shall rank senior to direct recruits enable and inter se seniority of appointees in both groups would be subject to (i) and (ii) above.

10. Postings and Transfers.—Notwithstanding the initial appointment of any person on any particular post or in any particular class or category, the Chief Justice may in the interest of administration, transfer any such person to any other post, or in any other class or category in the Establishment of the Court, but such transfer or posting shall not affect his seniority as originally fixed or determined.

Part III

11. Punishment/Penalties.—(A) The following Penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed upon any Member of the Establishment, namely :—

Minor Penalties :

(i) censure,

((ii) fine,

(iii) with holding of increments or promotion, and

(iv) recovery from pay of any loss caused to the State.

Major Penalties :

(i) reduction to a lower post, rank, in a lower class or category or grade ;

(ii) pre-mature (compulsory) retirement ;

(iii) removal from service, which does not disqualify for future appointment ; and

(iv) dismissal

(B) Without prejudice to the generality of the provisions of law, no order imposing any ‘minor penalty’ shall be passed against a Member of the Establishment unless he has been given an adequate opportunity in writing of making a representation that he may desire and before taking such representation into consideration.

Explanation.—While an opportunity of making representation, the Member of the Establishment shall be informed in writing the substance of the accusations/allegations against him and he would be asked to submit his detailed reply/defence with respect thereto.

(C) Without prejudice to the generality of law and the Constitutional provisions, to order (other than an order passed on facts which had led to his conviction in a Criminal Court) imposing a ‘major penalty’ with respect to a Member of the Establishment shall be passed unless he has been informed in writing of the grounds on which it is proposed to take action against him and afforded an adequate opportunity of effectively defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the Member charged, together with a statement of the allegations/imputations in which each charge is based and the circumstances which it is proposed to take into consideration in passing the order, he shall be required within a reasonable time to put in a written statement of his defence and to state whether he pleads “guilty” or “not guilty” of the charges. If the Member charged pleads “guilty” to

the charge(s), but at the same time desires to be heard in person to explain any extenuating circumstance or put across any other factors, the Chief Justice may, after hearing him decide upon the imposition of the penalty.

If, however, the Member charged pleads “not guilty” to the charge(s), an enquiry shall be held in respect of such of the allegations as are not admitted by him and at such enquiry evidence will be recorded by an Enquiry Officer to be appointed by the Chief Justice. The Enquiry Officer shall submit his enquiry report to the Chief Justice, a copy whereof shall also be provided to the Member charged. The Chief Justice upon consideration may pass appropriate orders with respect to imposition of a ‘major penalty’, but before doing so, a show cause notice with respect to the proposed penalty shall be issued to the Member charged and after considering his reply thereto, the order with respect to the imposition of the penalty shall be passed.

12. Appeals.—Every Member of the Establishment against whom any penalty, minor or major, has been imposed, shall be entitled to file an Appeal against such an order which shall be heard by Standing Appeal Committee consisting of three Judges of the Court to be nominated by the Chief Justice.

Provided that no such appeal shall be entertained unless it is filed with the Registrar General of the Court within a period of 30 days from the date of communication of the Order to be appealed against :

Provided further that the Chief Justice, or the Standing Appeal Committee may for sufficient reasons, condone the delay in filing. Appeal if the delay is not more than 30 days.

13. Suspension.—(1) The Chief Justice may place a Member of the Establishment under suspension where :

(i) an enquiry into his conduct is contemplated or is pending ;

(ii) a complaint against him of any criminal offence is under investigation or trial.

(2) A member of the Establishment who is detained in custody whether on a criminal charge or otherwise for a period longer than 48 hours shall be deemed to have been suspended by the Chief Justice under this Rule.

(3) The order of suspension may be revoked at any time by the Chief Justice.

14. Review.—The Chief Justice may, notwithstanding the provisions contained in these rules review any order imposing any penalty passed by him either suo motu or at the instance of any aggrieved Member of the Establishment.

Part IV

15. Probation.—(1) (A) Persons appointed to the service either by direct recruitment or by promotion shall be on probation for two years from the date of their initial appointment and their confirmation in service of the Establishment shall be subject to clearing the probation period successfully. In any individual case and class of cases, the Chief Justice may extend period of probation.

(B) It shall be permissible with respect to any individual member of the Establishment or group of such Members to make the passing of any special Examination a condition precedent for the clearance of the probation period.

(2) Confirmation.—A probationer shall be continued substantively at the end of his probation period (of extended probation period) if his work and conduct during the period of probation has been found to be satisfactory.

16. Existing Members of the Establishment.—Persons already serving in the Establishment of the Court before the commencement of these rules shall be considered as the members of the Establishment under these rules for all intents and purposes.

17. Reservations.—Reservation in direct recruitments, for various categories and classes of posts in the Establishment of the Court with respect to Scheduled Castes, Scheduled Tribes and other categories shall be in accordance with the orders issued by the Chief Justice from time to time, having due regard to the prevailing policies of the Government.

18. Special Deputation.—The Chief Justice may at his discretion appoint any person in the Establishment of the Court on deputation from any source outside the Court. The Chief Justice may in any appropriate case permit a member of the Establishment to go on deputation outside the Court for such period

as he considers appropriate.

19. Appointment on compassionate Grounds.—The Chief Justice may in suitable cases appoint on compassionate ground any person having requisite qualification against a Class III post, except that of an Assistant or above, or on a Class IV post, but subject to availability of posts.

Part V

20. Residuary Matters.—With regard to matters not specially covered by these Rules, including the matters governing service conditions of the Members of the Establishment, their conduct and discipline, the Members of the Establishment shall be governed by law, rules and regulations or norms applicable to the State Government Employees in general in so far as these are not inconsistent with, or repugnant to these rules.

21. Delegation.—The Chief Justice may delegate to anyone any of the powers vesting in him under these Rules.

22. Relaxation.—The Chief Justice may from time to time with respect to any individual case or for any class or group of cases relax any condition or any requirement as it relates to age, qualification or minimum experience, as is or may be prescribed in or under these Rules.

23. Interpretation.—If any dispute or question arises relating to the applicability or interpretation of these rules, the decision of the Chief Justice shall be final.

24. Regulations and Administrative Orders.—(A) With a view to achieve the purpose of these Rules and also to carry into effect the provisions and objectives contained therein, the Chief Justice may from time to time make Regulations or issue Administrative Orders.

(B) Without prejudice to the generality of the foregoing power, such Regulations or Orders may relate to, or provide for :—

(i) a procedure for making direct appointments, including the conduct of examinations and the fees required to be paid by the candidates desirous of appearing in such Examinations ;

(ii) the method of granting promotions ;

(iii) the provision or prescription of any special examinations or tests for clearance of probation ; or

(iv) the prescription of higher or additional qualifications for any post to be filled up either by direct recruitment or promotion, or relaxation of any such qualification in any particular or special case, or category of cases.

25. Amendment of the rules.—The Chief Justice may from time to time amend these rules.

26. Repeal and savings.—(A) All previous Rules, Regulations, Orders, Notifications, Circulars, Instructions and other Instruments with respect to the subject matter covered by these Rules are hereby repealed.

(B) Notwithstanding such repeal, any appointment made or action taken under any of the aforesaid repealed provisions shall be deemed to have been made or taken under these Rules and is hereby saved.

**Subs by Amendment Rules, 2005 (w.e.f. 1.11.2005). 3[SCHEDULE A

Officers on deputation

(The following posts in the establishment of the Court shall be filled up by deputation of Officers, drawn from Jharkhand Superior Judicial Service and Jharkhand Judicial Service, as the case may be).

Sl. No. Category/designation of post.

1. Registrar General.

2. Registrar (Administration).

3. Registrar (Vigilance & Inspection).

4. *Registrar (Establishment).

5. Additional District Judge-cum-Principal Secretary to the Chief Justice.

6. Joint Registrar (Judicial).
7. Joint Registrar (List & Computer).
8. Joint Registrar (Establishment).
9. Deputy Registrar (Protocol).
10. Assistant Registrar (Judicial).

*Only if a member of the Establishment of the Court is either not senior enough or not found suitable to be appointed on this post.

SCHEDULE B

Officers, being Members of the Establishment of the Court

Sl. No., Category/

Class/ Designation, Mode of appointment, Minimum qualification required,, if any, Minimum experience,, if any,, required having been earned on the feeder post, Existing Scale of Pay

1, 2, 3, 4, 5, 6

1., *Registrar (Establishment), By selection from non-judicial Joint Registrars on the basis of merit-cum-seniority, , , Rs. 14,300-

400-18,300/-

2., (a) Joint Registrar (Administration)

(b) Joint Registrar (Non-Judicial), By selection from Non-Judicial Deputy Registrars of the High Court/ Deputy Registrar-cum- PPS to the Chief Justice/ Senior Secretaries of the Judges on the basis of merit-cum-length of service in the existing scale, , , Rs. 14,300-

400-18,300/-

3., Deputy Registrars (Non-Judicial), By selection from Non- Judicial Assistant Registrars/Court Masters/Librarian and Secretaries to the Judges on the basis of merit-cum-length of service in the existing scale, , Five Years, Rs. 12,000-375- 16,500/-

4., Deputy Registrar- cum-Principal Private Secretary to the Chief Justice, By selection from Senior Secretaries/Secretaries to Judges on the basis of merit- cum-seniority, , , Rs. 12,500- 375- 16,500/-

^, ^, **Note :** (A) Posting of D.R.- cum-PPS will be at the sole discretion and pleasure of the Chief Justice, , ,

^, ^, (B) The Chief Justice may,, by way of departure from the afore- said requirement,, appoint any other person also on this post, , ,

5., Senior Secretaries to the Judge, By selection from Secretaries to the Judges on the basis of merit-cum-seniority, , , Rs. 12,000-375-16,500/-

6., Librarian

, By promotion from Assistant Librarian and in case suitable candidate is not available by direct recruitment, Graduate and Degree in Library Science from a University, Three Years,

7., Assistant Registrars (Non-Judicial), By selection from Administrative Officers/ Senior P.A/or such other posts of equivalent pay/ status as may be prescribed taking into account both merit and suitability as may be determined by written examination or oral interview,, whichever is prescribed and the length of service in the existing scale, , Five Years, Rs. 10,000-325-15,200/-

8., Secretaries to the Judges, By selection from Senior P. As. on the basis of merit-cum- seniority and passing of such examination as may be prescribed, , Three Years, Rs. 10,000-325-15,200/-

9., Court Masters, **A.** 50% by promotion from Members of the Establishment having a minimum qualification of Law Graduate, , Five Years, Rs. 9,000-250-10750- 300-13,150- 350-14,550 with three additional increments @ Rs. 250/-.

^, ^, **B.** 50% by direct recruitment with minimum qualification of Law Graduate with at least three years experience of working as an Advocate, ^, ^, ^

^, ^, **Note :** If the candidates in the promotion quota with suitable merit are not available,, the short-fall may be made up by direct recruitment, ^, ^, ^

*Subjected to the sufficient seniority and being found fit and suitable; otherwise this part will be filled up by deputation from Jharkhand Superior Judicial Service.

SCHEDULE C

Class II (Gazetted)

Sl. No., Category/Class/ Designation, Mode of appointment, Minimum experience,, if any,, required having been earned on the feeder post, Existing Scale of Pay

1, 2, 3, 4, 5

1., Administrative Officers, By promotion from Section Officers/ Stamp Reporter/ Oath Commissioner/ Deputy Director (Translation)/Translation Officer on the basis of merit-cum-length of service in the existing scale, Three Years, Rs. 6,500-200- 10,500/-

2., Oath Commissioner, By promotion from Assistants/ Translators on the basis of merit-cum- length of service in the existing scale., Five years, Rs. 6,500-200-10,500/-

3., Stamp Reporter, By promotion from Assistants/ Translators on the basis of merit- cum-length of service in the existing scale, Five years, Rs. 6,500-200-10,500/-

4., Deputy Director (Translation), , , Rs. 6,500-200-10,500/-

5., Section Officers, By promotion from Assistants and Translators or any post of the same scale on the basis of merit- cum- seniority/length of service in the existing grade, Five Years, Rs. 6,500-200-10,500/-

6., Senior Personnel Assistants, By promotion from amongst the P.As. subject to the passing of examination,, if any prescribed, Five years, Rs. 6,500-200-10,500/-

7., Translation Officer, By promotion from Translators on the basis of merit-cum-seniority, Five years, Rs. 6,500-200-10,500/-

8., Accounts-cum-Cash Officer, By promotion from Cashier, Three years,

SCHEDULE D

Non-Gazetted Class III and IV Posts

(Sources, qualifications and methods of recruitment)

Sl. No., Designation of posts, Mode of appointment, Minimum qualification for appointment, Existing Scale of pay

1, 2, 3, 4, 5

1., Personal Assistants, By direct recruitment on the basis of English Shorthand and typewriting test with minimum per minute speed of 100 words and 40 words respectively

, Graduate from a University, Rs. 5,500-175-9000/-

2., Assistants—, (i) 50% vacancies in a calendar year by direct recruitment, Graduate from a University, Rs. 5,500-175- 9,000/-

^,
, ^, ^, ^

,

, (ii) 25% Vacancies in a calendar year by appointment from Ex-cadre Assistants,, Treasury Sarkar,, Xerox Operator and other employees holding other similar class III or Class IV posts on the basis of seniority-

cum-merit and/or limited competitive test,, as may be prescribed., ,

, (iii) 25% of the vacancies in a Calendar year by absorption from daily wages literate Mazdoors or Mazdoors after completing three years of conti-nuous satisfactory service on the basis of seniority and/or limited competitive test,, as may be prescribed : , ,

, , Provided that if suitable candidates are not available in categories (ii) and (iii),, the remaining vacancies may also be filled up by direct recruitment

, ,
3., Cashier, By direct recruitment, Commerce/
Economics Graduate from a University

, Rs. 5,500-175-9,000/-

4., Translators, By promotion from Junior Translators on the basis of seniority-cum-merit or by direct recruitment

, Graduate from a University, Rs. 5,500-175- 9,000/-

1, 2, 3, 4, 5

5., Telex Operator, By direct recruitment, Graduate from a University with experience in Telex operating
, Rs. 5,000-150- 8,000/-

6., Data Entry Operator, By direct recruitment, Degree in Computer Engineering or one year Diploma Holder with two years experience

, Rs. 5,000-150- 8,000/-

7., Junior Translator, By direct recruitment, Graduate from a University

, Rs. 5,000-150- 8,000/-

8., Assistant Librarian, By direct recruitment, Graduate and Degree in Library Science from a University
, Rs. 5,000-150-8,000/-

9., Court Officer, (i) By selection from Assistant Court Officer/ Ex-cadre Assistants, Graduate from a University, Rs. 4,500-125- 7,000/-

^, ^, (ii) If suitable candidate of category (i) is not available by direct recruitment

, ^, ^

10., Typist, (i) 50% by direct recruitment, Graduate from a University having typing speed 40 words per minute in English and/ or 30 words per minute in Hindi

, Rs. 4,000-100- 6,000/-

^, ^, (ii) 50% by promotion from Class-IV employees or by absorption of the Literate Mazdoors and Mazdoors, ^, ^

11., Ex-cadre Assistants, By promotion from Class IV employees,, or by absorption of ILterate Mazdoors and Mazdoors or both having minimum two years experience, Intermediate in case of promotion/ absorption and Graduate in case of direct recruitment, Rs. 4,000- 100- 6,000/-

, , **Note** : If none of the two is available,, or if found suitable,, by direct recruitment

, ,

12, Assistant Court Officer, By promotion from Class IV employees, or by absorption of the Literate Mazdoors and Mazdoors or both having minimum two years experience

Note : If none of the two is available,, or if found suitable,, by direct recruitment., Intermediate in case of pro- motion/absorption and graduate in case of direct recruitment

, Rs. 3,200-85-4,900/-

**Deleted by Amendment Rules, 2003 (w.e.f. 1.1.2003). **Added by Amendment Rules, 2003 (w.e.f. 1.1.2003).

Class IV

Sl. No., Designation of Posts, Mode of appointment, Minimum qualification for appointment, Existing Scale of Pay

1, 2, 3, 4, 5

1., Senior Staff Car Driver-cum- Mechanic, By way of promotion from amongst Staff Car Drivers having due regard to seniority, Having ten years of experience of Staff Car Driving and having knowledge of car mechanism

2., Staff Car Driver, (a) By absorption from daily wages employees on completing minimum two years satisfactory service,, having due regard to seniority, Having a validly issued Driving License and possessing such qualification as may be prescribed

, Rs. 3,050-75- 3,950-80- 4,590/-

, (b) In absence of Daily Wages employees,, by direct recruitment, **Note** : The passing of the driving test shall be a mandatory requirement and a condition precedent for appointment on this post

3., Treasury Sarkar, By selection from regular Class IV employees holding posts in the lower scale of pay or from Daily Wages employees on completion of five years of continuous satisfactory service with due regard to seniority, Matriculation, Rs. 2,750-70- 3,800-75-4,400

4., Xerox Operator, (a) By absorption from Daily Wages employees on completing minimum two years of satisfactory service having due regard to seniority, Matriculation with knowledge of handling Duplicating,, Fax and Photocopy Machines, Rs. 2,750-70- 3,800-75- 4,400/-

, (b) In absence of Daily Wages employees by direct recruitment

5., Electrician, By absorption from Daily Wages Mazdoors on completing minimum two years of satisfactory service having due regards to seniority

Or

In absence of Daily Wages employees,, by direct recruitment

, Having Diploma of Electrician from I.T.I.,

6., Mali's, By absorption from Daily Wages Mazdoors on completing minimum two years of satisfactory service having due regard to Seniority

Or

If not available,, by direct recruitment

, Proficiency in Gardening,, knowledge of reading writing and cycling, Rs. 2,650-65- 3,300-70-4,000

7., Jamadars, By promotion from Peons on the basis of seniority and satisfactory service, , Rs. 2,610-60- 3,150-65-3,540/-

8., Cook, By direct recruitment or by absorption from Daily Wages Mazdoors

, Having knowledge of cooking/ catering, Rs. 2,650-65- 3,300-70-4,000/-

9., Records Supplier, By selection from regular Class IV employees,, holding posts in the lower scale of pay or from Daily Wages employees on completion of five years of continuous satisfactory service with due regard to seniority

, Matriculation, Rs. 2,650-65- 3,300-70-4,000/-

10., Generator Operator, By selection from regular Class IV employees holding posts in the lower scale of pay or from Daily Wages employees on completion of five years of continuous satisfactory service with due regard to seniority

, , Rs. 2,650-65- 3,300-70-4,000/-

11., Daftari, By selection from regular Class IV employees holding posts in the lower scale of pay or

from Daily Wages employees on completion of five years of continuous satisfactory service with due regard to seniority

, , Rs. 2,610-60-
3,150-65-3,540/-

12., Chaukidar, By absorption from Daily Wages Mazdoors on completing minimum three years service having due regard to merit-cum-seniority or in absence of Daily Wages Mazdoors,, by direct recruitment , Cycling,, knowledge of reading and writing, Rs. 2,550-55- 2,660-60-3,200/-

13., Faras, By absorption from Daily Wages Mazdoors on completing minimum three years service having due regard to merit-cum- seniority or in absence of Daily Wages Mazdoors,, by direct recruitment , Cycling,, knowledge of reading and writing, Rs. 2,550-55- 2,660-60-3,200/-

14., Sweeper, By absorption from Daily Wages Mazdoors on completing minimum three years service having due regard to merit-cum-seniority or in absence of Daily Wages Mazdoors,, by direct recruitment , Cycling,, knowledge of reading and writing, Rs. 2,550-55- 2,660-60-3,200/-

15., Water Supplier, By absorption from Daily Wages Mazdoors on completing minimum three years service having due regard to merit-cum-seniority or in absence of Daily Wages Mazdoors,, by direct recruitment , Cycling,, knowledge of reading and writing, Rs. 2,550-55- 2,660-60-3,200/-

16., Peons, By absorption from Daily Wages Mazdoors on completing minimum three years service having due regard to merit-cum- seniority or in absence of Daily Wages Mazdoors,, by direct recruitment , Cycling,, knowledge of reading and writing, Rs. 2,550-55- 2,660-60-3,200/-

17., Daily Wage Literate Mazdoors, On Daily Wages basis, Graduate, Rs. 85/- per day including Sundays

18., Mazdoors, On Daily Wages basis, Cycling, Rs. 65/- per day including Sundays.

Note : 1. Cycling is not necessary for female candidates.

2. For the posts of Peon, preference may be given to Washerman/ Barber/Carpenter/Tailor/Daftri by profession.]

<P11M>APPENDIX-X

JHARKHAND SUPERIOR JUDICIAL SERVICE (RECRUITMENT, APPOINTMENT AND CONDITION OF SERVICE)

RULES, 2001Published in Jharkhand Gazette, Extraordinary No. 91, dated May 10, 2001. JHARKHAND SUPERIOR JUDI. SERV. (RECRUITMENT.....SERVICE) RULES, 2001**

Notification No. 6/Astha. Nyaya - 610/2001Ka - 1246, dated 8th May, 2001.—In exercise of powers conferred by Article 233 read with Article 309 of the Constitution of India and all provisions of law enabling in that behalf, and in supersession of all earlier Rules on the subject, the Governor of Jharkhand, after consultation with the High Court of Jharkhand at Ranchi, is pleased to make the following Rules for regulating the recruitment in appointment to and the conditions of service with respect to the members of the Jharkhand Superior Judicial Service.

CHAPTER I

1. Short title and commencement.—These rules may be called as the Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001 and shall take effect from the date these are published in the official Gazette.

2. Definitions.—In these rules unless there is anything repugnant to the subject or context :—

- (i) Additional District Judge includes any other post of equivalent rank.
- (ii) "Cadre" means the cadre of the Jharkhand Superior Judicial Service.
- (iii) "Direct Recruit" means an officer in the cadre appointed to the service in accordance with clause (a) of Rule 4.
- (iv) "Government" means the Governor of Jharkhand.
- (v) "Governor" means the Governor of Jharkhand.
- (vi) "High Court" means the High Court of Jharkhand at Ranchi.
- (vii) "Jharkhand Judicial Service" means the judicial service as constituted by the Jharkhand Judicial Service (Recruitment) Rules, 2001.
- (viii) "Promoted Officer" means an officer in the cadre appointed to the service from amongst the officers belonging to the Jharkhand Judicial Service by promotion in accordance with Clause (b) of Rule 4.
- (ix) "Scheduled Castes" means the castes specified in Part II of the Constitution (Scheduled Castes) Order, 1950.
- (x) "Scheduled Tribes" means the tribes specified in Part II of the constitution (Scheduled Tribes) Order, 1950.
- (xi) "Service" means the Jharkhand Superior Judicial Service.

3. Cadre strength and the composition of the service along with the pay scales in various categories of the cadre shall be as specified by the State Government from time to time after consultation with the High Court.

4. Appointment to the service.—Appointment to the service, which shall in the first instance ordinarily be to the post of Additional District Judge, shall be made by the Governor, in consultation with High Court :—

(a) by direct recruitment of persons as recommended by the High Court for such appointment under clause (2) of Article 233 of the Constitution of India; and

(b) by promotion on merit-cum-seniority basis from amongst the officers belonging to the Jharkhand Judicial Service :

Provided that where the merit of the officers is equal in all respects, seniority shall prevail and be given weightage.

5. Of the total posts in the cadre of the service 67% shall be filled in by promotion and 33% by direct recruitment :

Provided that the State Government may, in consultation with the High Court, from time to time deviate from the aforesaid percentage in either direction.

6. Probation.—A member of the service appointed under clause (a) of Rule 4 shall be on probation for a period of two years :

Provided that the probation period may, in any individual case be extended from time to time by the High Court.

7. Grant of increments :

(a) The initial pay of a promoted officer shall be fixed by adding Rs. 500/- in the time scale at the stage next above that arrived at by adding to his substantive pay as a member of the Jharkhand Judicial Service.

(b) The initial pay of a direct recruit shall be fixed in the time scale by adding to his substantive pay one annual increment in time scale for every four years of practice at the Bar, subject to minimum of Rs. 250/- and not being more than 500/-.

Notwithstanding anything contained in this Rule, the fixation of pay will be subject to the decision of the State Government in consultation with the High Court.

8. Seniority :

(a) Seniority inter se of direct recruits shall be determined in accordance with the dates of their respective appointments to the service.

(b) Seniority inter se of promoted officers shall be determined on the basis of their seniority as existing

in the Jharkhand Judicial Service immediately prior to their appointment under these Rules.

(c) If at any time more than one direct recruit is appointed in the service, the inter se seniority of such appointees will be determined in accordance with the order of merit as obtaining in the select list at the time of their appointment.

(d) Seniority of direct recruits vis-a-vis promoted officers shall be determined with reference to the dates on which their appointments actually are made :

Provided, however, when a direct recruit and a promoted officer are appointed on the same date, the promoted officer shall rank senior to the direct recruit.

CHAPTER II

SELECTION OF DIRECT RECRUITS

9. Eligibility.—A candidate shall be eligible to be appointed as an Additional District Judge under these Rules, if :—

(a) he is above the age of 35 years and below the age of 45 years as on the last day of January preceding the year in which the examination is held; provided that in the case of a candidate belonging to scheduled caste or scheduled tribe, there may be a relaxation of upper age limit by three years;

(b) is a graduate in law from a University recognised for the purpose of enrollment as an Advocate under the advocates' Act, 1961;

(c) has an experience of more than seven years at the Bar as a practicing Advocate after having been duly enrolled as such under the Advocates' Act, 1961;

(d) possesses good health, is of sound moral character and is not involved in, or related to any criminal case of any type involving moral turpitude.

10. (a) The High Court may undertake the entire selection process either itself or entrust the same, either wholly or in part, to another Agency. If the selection process is entrusted either wholly or in part to another Agency, the name of such an agency shall be approved before the selection process starts by a resolution adopted at a meeting of all the Judges of the High Court and the terms and conditions for such engagement by such Agency shall be finalised in this meeting.

Explanation.—Under these Rules, therefore, wherever the expression 'High Court' occurs with respect to the conduct of examination of the selection process, such expression shall include such agency as well.

(b) If the selection process, either wholly or in part, is entrusted to an agency, such Agency shall ensure that it maintains secrecy and confidentiality in all respects with regard to the conduct of the selection process at all levels and before starting the selection process shall submit in writing to the High Court an undertaking to the following effect :—

"I/We having been entrusted with the task of undertaking the selection process, as communicated to us by the High Court of Jharkhand at Ranchi vide their communication no..... date.....do hereby State, undertake and bind ourselves that we shall maintain absolute secrecy and confidentiality at all levels and in all stages of the election process until we submit the report/recommendation/evaluation finally to the High Court and for all times thereafter, or until the final result finally published by the High Court and the selection process is completed in all respects and appointments based on our aforesaid recommendation/report/evaluation made and till such further period as the High Court may direct us to do so. We understand that the breach of this undertaking by us or by any one or our behalf shall be liable to action under law."

11. If in any particular year the number of candidates is very large and in the opinion of the High Court if it is desirable to have a Preliminary Written Entrance Test in order to limit the number of candidates for the Main Written Examination, it may conduct a Preliminary Written Entrance Test and prescribe the minimum qualifying standards therein as also the number of candidates to be selected therein who shall thus be eligible to appear in the main written examination. The High Court may make regulations from time to time prescribing the syllabus for the Preliminary Written Entrance Test and for the Main Written Examination and before the commencement of selection

process, such syllabus may be made available to the intending candidates.

12. The High Court may invite applications from the intending candidates. The application may either be in the prescribed proforma as published in the advertisement/notification or may be in a printed form as may be obtained from the intending candidates. Similarly, at the start of each selection process, the High Court may also decide that each candidate along with the application/application form may submit one or more for the following :—

(i) Certificates or copies thereof with respect to the educational qualifications and the enrollment certificate under the Advocates' Act, 1961, as also the experience at the Bar.

Explanation.—The certificate of experience at the Bar shall be obtained by the candidate either from Registrar General/Registrar of the High Court or such other officer of the High Court as the Chief Justice may nominate, District Judge or the Chief Judicial Magistrate of the district in which he has been practicing as an Advocate, or from the President and the Secretary of the Bar Association jointly signed by both of them, duly countersigned by the registrar General/Registrar or other nominated officer of the High Court, District Judge/Chief Judicial Magistrate/any other Judicial Officer of that district in which the candidate has been practicing.

(ii) Names of at least two persons as references along with the reference testimonials certifying that they know the candidate personally and that he bears a good moral character, is not involved in any criminal case or an offence relating to moral turpitude and in the opinion of such referensor has an aptitude for judicial service. None of the Referensors should be related to the candidate directly or indirectly.

(iii) A certificate from a qualified medical practitioner that the candidate possesses sound health and is free from any disease which may be hazardous for his service.

(iv) Certificate of age issued by the Board for School Education or a University as duly recognised by law.

Explanation.—If the candidate submits the copies of the certificate and not the originals, the copies should be certified as true copies of the originals by a Judicial Magistrate. Candidates shall, however, be under obligation to produce the originals before the High Court as and when so required, or at the viva voce test.

(v) A bank draft or a postal order of prescribed amount towards the payment of the examination fee as may be fixed or prescribed by the High Court from time to time.

13. On receipt of the application/application form from the candidates, the High Court shall process the same and on being satisfied that the application/application forms are in order and that the candidate is eligible to appear at the examination, an admit card shall be issued to the candidate. No candidate shall be admitted to any examination unless he holds such an admit card.

It is therefore in the interest of the candidates that before they apply they satisfy themselves that they are eligible and that the application/ application forms are duly filled in by them and are complete in all respects and documents enclosed relating to payment of examination fee etc.

14. Notwithstanding anything contained in the foregoing Rule, it shall be open to the High Court to require the candidate at any stage of the selection process or thereafter, to furnish any such additional proof or to produce any document with respect to any mater relating to his suitability and/or eligibility as the High Court may deem necessary.

15. If any candidate at any time, either during the selection process, before or after the examinations are conducted, or at any time thereafter is found to have furnished any false information or made any misrepresentation relating to his age, academic qualifications, experience at the Bar, enrollment as an advocate, eligibility, suitability or otherwise, at its sole discretion the High Court may cancel the candidature of such a candidate and may debar him from appearing in the examination at any stage of the selection process. Similarly, if a candidate obtains appointment under these Rules based on any of the aforesaid, such appointment shall be liable to immediate termination by the High Court.

16. Subject to the provisions of these Rules, the decision of the High Court as to eligibility or

otherwise of the candidate for admission to the examination and for his recruitment shall be final.

17. If during the conduct of the examination any candidate is found :

- (i) resorting to any irregular or improper means for obtaining admission to examination;
- (ii) impersonating as another candidate or being impersonated by any person at the written or viva-voce examination;
- (iii) submitting fabricated or forged document or documents which have been tampered with or interpolated;
- (iv) making statements which are false or incorrect or suppressing material information;
- (v) communicating with any other person for the purpose of getting help or trying to influence the candidature;
- (vi) behaving unruly, rudely or in an uncivilized manner in the examination hall or violating any instructions issued by the High Court in this behalf or disobeying any orders of the officials entrusted with the conduct of the examination;

such candidate shall be expelled forthwith from the examination hall by the authority of the High Court or by any person authorised by the High Court in this behalf. In such a case, the High Court may invalidate the answer books or deal in such other manner with the candidate as it considers fit and proper, including his expulsion from any future examination for any period as may be decided.

18. Before the start of the examination, the High Court may fix the minimum qualifying marks in the Preliminary Written Entrance Test and thereafter minimum qualifying marks in the main examination. Based on such minimum qualifying marks, the High Court may decide to call for viva-voce such number of candidates, in order of merit in written examination, depending upon the number of vacancies available as it may appropriately decide :

Provided that in the case of candidates belonging to scheduled castes and scheduled tribes and candidates belonging to other reserved categories, such minimum qualifying marks may not be higher than 45% of the total aggregate marks :

Provided also that in determining the suitability of a particular candidate based on both the minimum qualifying marks as well as in order of merit, the total marks obtained in the examination as a whole and the marks obtained in any individual paper, both shall also be taken into consideration, depending upon any guidelines that the High Court may issue in this behalf in the Regulations to be framed for this purpose.

19. (i) The viva-voce test of the candidates shall be conducted by the High Court. The Chief Justice may decide upon the composition of the Board comprising the Judges of the High Court for this purpose.

(ii) All the members of the Board shall be assigned equal marks for assessing the fitness and suitability of candidate. At the end of the viva-voce test each day the Board shall not disperse unless it has recorded the marks allocated to each candidate in that day's viva voce-test in the manner as prescribed under the Regulation and in a sealed cover hand it over to the official of the High Court as may be nominated for this purpose by the Chief Justice. Each such sealed cover shall be in turn deposited by such nominated official of the High Court in safe custody in such manner as maybe prescribed by the Chief Justice.

20. The viva-voce test shall be conducted by the Board in such manner as to assess the merit, suitability and fitness of the candidate, shall be as objective as is possible and shall endeavour to elicit such answers from the candidate as would convey the candidate's aptitude towards the judicial service; his understanding of law; sharpness of mind; his intellect, knowledge and potential for becoming a good judicial officer.

21. A candidate, irrespective of the marks obtained by him in the Preliminary Written Entrance Examination and/or the Main Written Examination shall not be qualified to be appointed unless he obtains a minimum of 30% marks in the viva-voce test. The marks obtained at the viva voce test shall then be added to the marks obtained by the candidate at the main written examination. The names of the candidates will then be tabulated and arranged in order of merit. If two or more candidates obtain equal marks in the aggregate, the order shall be determined in accordance with the marks secured at the main written examination. If the marks

secured at the main written examination of the candidates also are found equal, then the order shall be decided in accordance with the marks obtained in the Preliminary Written Entrance Test. From the list of candidates so arranged in order of merit the High Court shall prepare a select list and have it duly notified in a manner as prescribed in the regulations. Such select list shall be valid for a period of one year from the date of being notified.

22. From out of the aforesaid select list, depending upon the number of vacancies available or those required to be filled up, the High Court shall recommend to the Government the names for appointment as Additional District Judge.

23. After the Government receives the aforesaid recommendations from the High Court, it may make such enquiry and undertake such investigation as is considered necessary to find out and determine that the candidate is suitable in all respects for appointment to the judicial service only in so far as such suitability relates to the candidate's credentials with respect to his involvement in any criminal case or anti-social or anti-National activities. Such investigation/enquiry, however, shall be completed as soon as possible from the time of receipt of recommendation from the High Court, but not later than six weeks from the date of such receipt.

24. After the completion of the investigation/enquiry, as undertaken vide the aforesaid Rule, the appointment orders shall accordingly be issued.

25. Notwithstanding anything to the contrary contained in these rules, an Additional District Judge appointed on temporary basis shall be eligible for permanent appointment to the service without there being any upper age limit subject to the conditions that;

(i) he has completed two years of service from the date of his first appointment.

(ii) he has passed such tests as may from time to time be prescribed in the Departmental Examination Rules, if any, and

(iii) he is recommended by the High Court for such permanent appointment.

26. No recommendation except those received in accordance with these rules shall be entertained or taken into consideration. Any attempt on the part of any candidate to enlist support for his appointment through any person or any influence, or in any other manner will disqualify him for appointment.

27. The record of each examination as held under these Rules, both with respect to the written examinations at both the levels and the viva-voce test shall be maintained and preserved by the High Court for at least one year from the date of notification of the select list.

28. The candidate shall be entitled on payment of such fee as may be prescribed in this behalf by the Regulations to apply for and obtain the break up of his result in any such examination.

CHAPTER III

29. Conditions of service.—All such matters relating to conditions of service of the officers appointed under these rules and not specified herein shall be governed by the general rules in this behalf.

CHAPTER IV

30. Power to make regulations.—The High Court may make Regulations for carrying out the purposes of these rules for giving effects to the objectives contained herein.

<P11M>APPENDIX-XI

**JHARKHAND JUDICIAL SERVICE (RECRUITMENT)
RULES, 2004**

Noti. No. 6/Bibidh/808/2002/977 dated the 31st March, 2005— Published in Jharkhand

Gazette Extraordinary No. 145 dated 4th April, 2005.—Whereas the posts of Civil Judge, Senior Division (Subordinate Judges) and Civil Judge, Junior Division (Munsifs) are required to be filled urgently, there being a dire and emergent need of doing so;

Whereas these appointments are continuously required to be made on the vacancies occurring every now and then; and

Whereas the Supreme Court of India in the case of All India Judges Association and others v. Union of India and others, (writ petition (c) No. 1022 of 1989 vide judgment dated 21st March, 2002 has issued directions and passed orders for immediate and urgent appointment of additional number of Judicial Officers.

Now therefore in exercise of the powers conferred by Article 234 read with Article 309 of the Constitution of India and all provisions of law enabling him in that behalf, and in supersession of all earlier Rules on the subject, the Governor of Jharkhand, after consultation with the High Court of Jharkhand and Jharkhand State Public Service Commission, is pleased to make the following Rules so as to select, recruit and appoint Members of the Jharkhand Judicial Service and regulate terms and conditions of their service—

1. Short title and commencement.—These Rules may be called the Jharkhand Judicial Service (Recruitment) Rules, 2004 which shall take effect from the date of publication in the Official Gazette.

2. Definitions.—In these Rules, unless there is/are anything repugnant to the subject or context,—

(i) “Board” means the Board constituted for Viva Voce test consisting of three members, two of whom being sitting judges of the High Court nominated by the Chief Justice of the said High Court and, the Chairman of the Commission or any one member of the Commission as may be nominated by the Chairman.

(ii) “Chief Justice” means the Chief Justice of the High Court of Jharkhand;

(iii) “Chairman” means the Chairman of the Jharkhand Public Service Commission;

(iv) “Commission” means the Jharkhand Public Service Commission;

(v) “Government” means the Government of Jharkhand;

(vi) “Governor” means the Governor of Jharkhand;

(vii) “High Court” means the High Court of Jharkhand;

(viii) “Prescribed” means as prescribed by the High Court in the Regulations or otherwise;

(ix) “Scheduled Castes” means the castes specified in Part II of the Constitution (Scheduled Castes) Order, 1950 and as amended by the Fifth Schedule of the Bihar Reorganization Act, 2000;

(x) “Scheduled Tribes” means the tribes specified in Part II of the Constitution (Scheduled Tribes) Order, 1950 and as amended by the Sixth Schedule to the Bihar Reorganization Act, 2000;

(xi) “Other Backward Classes” means the castes/communities enlisted in Bihar Reservation of Vacancies in Posts and Services (for SC, ST and Backward Classes) Act, 1991, as adopted and as amended from time to time by the Government of Jharkhand;

(xii) “Service” means the Jharkhand Judicial Service which includes the posts of Civil Judge, Senior Division (Subordinate Judges) and Civil Judge, Junior Division (Munsifs);

(xiii) “Judicial Academy” means Jharkhand Judicial Academy.

3. (a) Recruitment to the posts of Civil Judge, Junior Division (Munsif) shall be made in accordance with these Rules.

(b) Recruitment to the posts of Civil Judge, Senior Division (Subordinate Judges) shall be made on merit-cum-seniority basis by the High Court by promotion from Civil Judge, Junior Division (Munsifs) having 5 (five) year’s of continuous experience as Civil Judge, Junior Division (Munsifs) provided that in case of exigencies and non-availability of suitable Civil Judge, Junior Division (Munsifs), the High Court may fill up the posts upto 25% of the vacancies of a calendar year by direct recruitment from amongst Advocates having a minimum 5 (five) year’s of experience at the Bar.

Explanation.—“Direct Recruitment” to the post of Civil Judge, Senior Division (Subordinate Judges) will be made in the same manner in which the posts of Civil Judge, Junior Division (Munsifs) are made.

4. From time to time, the Commission, in consultation with the High Court, may decide and notify the

number of vacancies of Civil Judge, Junior Division (Munsifs) as are required to be filled up by appointment to be made on substantive or ad hoc basis, in accordance with these rules and shall then proceed to initiate the process of direct recruitment and invite applications from intending candidates eligible for appointment under these Rules.

However, while deciding and notifying the vacancies, the Commission shall make it subject to the Act, rules and Regulations in force regarding the reservation of vacancies in posts and services under the State so that vacancies category wise, reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, are included in the prescribed number in the notification issued by the High Court for this purpose.

5. Eligibility.—A candidate shall be eligible to be appointed as Civil Judges, Junior Division (Munsifs) under these Rules, provided :—

(a) He is above the age of 22 years and below the age of 35 years as on the last day of January of the year in which applications for examination are invited;

Provided that in the case of a female candidate, or candidates belonging to Scheduled Caste or Scheduled Tribe there shall be relaxation of the upper age limit by 3 years.

(b) He is a graduate in law from a recognized University and enrolled as an advocate under the Advocates Act, 1961, and

(c) He possesses sound health, bears good moral character and is not involved in, or related to any criminal case involving moral turpitude.

5-A. Eligibility.—A candidate shall be eligible to be appointed as Civil Judge, Senior Division (Subordinate Judge) under these Rules, provided :

(a) He is above the age of 27 years and below the age of 40 years as on the last day of January of the year in which applications for examination are invited;

Provided that in the case of a female candidate, or candidates belonging to Scheduled Caste or Scheduled Tribe, there shall be a relaxation of the upper age limit by 3 years.

(b) He is a graduate in law from a recognized University and enrolled as an advocate under the Advocates Act, 1961, and

(c) He possesses sound health, bears good moral character and is not involved in, or related to any criminal case involving moral turpitude.

6. The Commission shall, in consultation with the High Court, undertake the entire selection process.

7. If in any particular year the number of candidates is very large and in the opinion of the High Court, it is desirable to have a Preliminary Written Entrance Test in order to limit the candidates for the Main Written Examination, the Commission may conduct a Preliminary Written Entrance Test. The High Court may make Regulations from time to time prescribing the syllabi for the Preliminary Written Entrance Test and also for the Main Written Examination and copies of such syllabi may be made available to the intending candidates along with the Forms.

8. The Commission shall invite applications from the intending candidates. The Application may either be in the prescribed form as published in the advertisement/ notification or may be in a printed form as may be obtained from the Commission. Similarly, at the commencement of each selection process, the Commission may also decide that each candidate along with the application/application form may submit one or more of the following :—

(i) Certificates or copies thereof with respect to the educational qualifications and experience if any required or prescribed by the High Court in the Regulations.

(ii) Names of at least two persons as referees along with the reference testimonials certifying that they know the candidate personally; that he bears a good moral character, is not involved in any criminal case or an offence relating to moral turpitude and that in the opinion of such referees, the Candidate has an aptitude for judicial service. None of the referees should be related to the candidate either directly or indirectly.

(iii) Certificate of age as issued by the Board for School Education Examination or a University as duly recognized by law.

(iv) A Bank Draft or a Postal Order of prescribed amount towards payment of examination fee as may be fixed or prescribed by the Commission from time to time.

Explanation.—If a candidate submits copies of the certificate and not the originals, the copies should be certified as true copies of the original, by a Gazetted Government Officer. Such candidate shall, however, be under obligation to produce the originals before the Commission as and when so required.

9. On receipt of the application/application form submitted by the candidates, the Commission shall process the same and on being satisfied that the application/ application forms are in order and that the candidate is eligible to appear in the examination, shall issue Admit Card to the candidate. No candidate shall be admitted to any examination unless he holds such an admit card.

Explanation.—It is, therefore, in the interest of the candidates that before they apply they satisfy themselves that they are eligible and that the application/application forms are duly filled in by them and are complete in all respects and that the documents enclosed relating to payment of examination fee etc.

10. Notwithstanding anything contained in the foregoing Rule, it shall be open to the Commission to require the candidate at any stage of the selection process or thereafter, to furnish any such additional proof or to produce any document with respect to any matter relating to his suitability and/or eligibility as the commission may deem necessary.

11. If any candidate at any time, either during the selection process, before or after the examinations are conducted, or at any time thereafter is found to have furnished any false information or made any misrepresentation relating to his age, academic qualifications, experience at the Bar, enrollment as an Advocate, eligibility, suitability or otherwise, the Commission may, at its sole discretion, cancel the candidature of such candidate and may debar him from appearing in the examination at any stage of the selection process. Similarly if a candidate obtains appointment under these Rules based on any of the aforesaid, such appointment shall be liable to immediate termination.

12. Subject to the provisions of these Rules, the decision of the Commission as to eligibility or otherwise of the candidate for admission to the examination and for his recruitment shall be final.

13. If during the conduct of examination any candidate is found :

- (i) Resorting to any irregular or improper means for obtaining admission to examination;
- (ii) Impersonating another candidate or being impersonated by any person at the written or viva voce examination;
- (iii) Submitting fabricated or forged documents or documents which have been tampered with or interpolated;
- (iv) Making statements which are false or incorrect or suppressing material information;
- (v) Communicating with any other person for the purpose of getting help or trying to influence the candidature;
- (vi) Using any unfair means in the examination hall;
- (vii) Behaving unruly, rudely or in an uncivilized manner in the examination hall or violating any instruction(s) issued by the Commission in this behalf or disobeying any order(s) of the official(s) entrusted with the conduct of the examination.

Such candidate shall be expelled forthwith from the examination hall under authority of the Commission or by any person authorized by the Commission in this behalf. In such a case, the Commission may invalidate the answer books or deal in such other manner with the candidate as it considers fit and proper, including his expulsion from any future examination for any period as may be decided.

14. The Commission in consultation with the High Court may fix the minimum qualifying marks for the Preliminary Written Entrance Test and also the minimum qualifying marks for the Main Examination. Based on such minimum qualifying marks, the Commission may decide to call for such number of candidates in order of

merit in the main written examination, depending upon the number of vacancies available as it may appropriately decide :

Provide that in the case of candidates belonging to scheduled castes and scheduled tribes such minimum qualifying marks shall not be more than 45% of the total aggregate marks.

Provided also that in determining the suitability of a particular candidate based both on the minimum qualifying marks as well as in order of merit, the total marks obtained in the examination as a whole and the marks obtained in any individual paper, both shall also be taken into consideration, depending upon any guidelines that the High Court may issue in this behalf in the Regulations to be framed for this purpose.

15. The Commission shall get the question papers set for the Preliminary/Main Examination and also select the examiners for evaluation of the answer books in consultation with the Chief Justice of the High Court.

16. (a) The Viva Voce Test shall be conducted by the Board consisting of three members, two of whom shall be sitting judges of the High Court nominated by the Chief Justice and the Chairman of the Commission or any one member of the commission as may be nominated by the Chairman.

(b) The Viva Voce Test shall be conducted by the board in such a manner so as to assess the merit, suitability and fitness of the candidate; shall be as objective as is possible and shall endeavour to elicit such answer from the candidate as would convey the candidate's aptitude towards judicial service; his understanding of law; sharpness of mind; his intellect, knowledge and potential for becoming a good Judicial Officer. In this regard the decision of the majority members of the Board shall be final.

(c) All members of the Board shall be assigned equal marks for assessing the fitness and suitability of the candidate. At the end of the Viva Voce Test each day the Board shall not disperse unless it has recorded the marks allocated to each candidate in that day's Viva Voce Test in the manner as prescribed under the Regulation and in a sealed cover hand it over to the Official of the Commission as may be nominated for this purpose by the Chairman. Each such sealed cover shall be in turn deposited by such nominated Official of the Commission in safe custody in such manner as may be prescribed by the Chairman.

(d) Any candidate who obtains less than qualifying marks as may be fixed by the Board for Viva Voce Test shall be ineligible to be appointed, irrespective of the marks obtained by him in the written examination.

17. (a) The marks obtained in the Viva Voce Test shall be added to the marks obtained by the candidates in the Main Written Examination. The names of the candidates will then be tabulated and arranged in order of merit. If two or more candidates obtain equal marks in the aggregate, the order shall be determined in accordance with the marks secured in the Main Written Examination. If the marks secured in the Main Written Examination of the candidates are also found equal, then the candidate who is older shall be placed above the other(s). From the list of candidates so arranged in order of merit, the Commission in consultation with the High Court, shall prepare a Select List and have it duly notified in a manner as prescribed in the Regulations. Such Select List shall be valid for a period of one year from the date of publication of the lists.

(b) The Commission shall, while forwarding its recommendation under these Rules consider the claims of qualified candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes. If the list of nominees does not contain an adequate number of candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, who may be entitled for appointment to the vacancies reserved for them, the Commission shall submit a Supplementary List some time later nominating a sufficient number of such candidates as in the opinion of the High Court attain the required standards of qualifications and are in all respects suitable for appointment to the service.

(c) Notwithstanding anything contained in these Rules, the Government may when satisfied that the members of the SC, ST and other Backward Classes are not adequately represented in the service, request the High Court to make special recruitment to such number of posts as are required to make up the deficiency or part thereof and candidates so recruited may be appointed on any of the existing vacancies. Such appointments may be made notwithstanding the fact that the vacancies are not to be filled up by candidates belonging to the SC, ST and Backward Classes under the rules relating to the rotation of appointments.

The procedure for the special recruitment of SC, ST and other Backward Classes shall, subject to the provisions of this rule, be the same as the one prescribed for regular recruitment.

18. From out of the aforesaid Select List, depending upon the number of vacancies available or those required to be filled up, the Commission, after consultation with the High Court, shall recommend to the Government the names for appointment as Civil Judges, Junior Division (Munsifs)/Civil Judges, Senior Division (Subordinate Judges).

19. After the Government receives the aforesaid recommendation from the Commission, it may make such enquiry and undertake such investigation as is considered necessary to find out and determine that the candidates are suitable in all respects for appointment to Judicial Service only insofar as such suitability relates to the credentials of the candidates with respect to their involvement in criminal case or anti-social or anti-national activities. Such investigation/enquiry, however, shall be completed as soon as possible from the time of receipt of recommendation from the commission, but not later than eight weeks from the date of such receipt.

20. After completion of the investigation/enquiry as undertaken as aforesaid, the appointment orders may be issued.

21. (a) The appointee in the first instance shall be called as a Civil Judge, Junior Division (Munsif)-trainee/Civil Judge, Senior Division (Subordinate Judge)-trainee. The appointment order issued by the Government shall accordingly also refer him as a Civil Judge, Junior Division (Munsif)- trainee/Civil Judge, Senior Division (Subordinate Judge)-trainee.

(b) For a period of one year from the date of appointment, or from such other date as the High Court may prescribe, that the Civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge) shall be admitted in the one year training course at the Judicial Academy of Jharkhand at Ranchi or such other place as the High Court may prescribe. After completion of one year training course, the Civil Judge, Junior Division (Munsif)-trainee/Civil Judge, Senior Division (Subordinate Judge)-trainee shall appear in the examination to be conducted by the Judicial Academy under the directions and guidance of the High Court and the successful passing of this Examination shall alone be the condition precedent for confirmation of the trainees as Civil Judges, Junior Division (Munsifs)/Civil Judges, Senior Division (Subordinate Judges).

(c) The Judicial Academy, in consultation with the High Court, shall evolve and prescribe the syllabus for the one year training course including the field-training and also decide about the nature of examination, the papers and subjects and the duration as also the aggregate marks and the qualifying marks in the said examination for the success of the trainees therein.

(d) The High Court may in its discretion, extend the duration of the training course for more than one year, but not more than two years, or may issue such other directions as may be in conformity with the spirit of training and the need for the same.

(e) The cases of such trainees who have not qualified in the Examination as required in clause (b) and who make appropriate representations, may be considered by the High Court with a view to suitably dispose of such representations and decide whether to afford them another chance of taking the Examination or not, and if so on what terms.

22. A person appointed as Civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge) under these Rules shall be on probation for a period of three years, the probation period starting from the date of his appointment as a trainee Civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge). The probation period may be extended by the High Court in individual cases, depending upon the performance and other parameters as may be fixed by the High Court from time to time, or depending upon the passing of such examination during service as may be prescribed for this purpose by the High Court.

23. Discharge of a probation during the period of probationer :—

(i) Notwithstanding anything contained in the preceding rule the appointing authority may in consultation with the High Court at any time during the period of probation, discharge from service a probationer on account of his unsuitability for the service.

(ii) An order under sub-rule (i) shall indicate the ground for discharge but no disciplinary enquiry shall be necessary.

24. No recommendation except those received in accordance with these Rules shall be entertained or taken into consideration. Any attempt on the part of any candidate to enlist support for his appointment through any person or exert any influence in any other manner, will disqualify him for appointment.

25. The record of each examination as held under these rules, both with respect to the written examinations at both the levels and the Viva Voce Test shall be maintained and preserved by the Commission for two years from the date of Notification of the Select List.

26. Power to make Regulations.—The High Court may make Regulations for carrying out the purposes of these Rules and of giving effect to the objectives contained therein.

27. Repeal and Savings.—(i) Jharkhand Judicial Service (Recruitment) Rules, 2001 issued vide Notification No. 185 dated the 20th August, 2001 are hereby repealed.

(ii) Notwithstanding such repeal, anything done or any action taken under the 2001 Rules shall be deemed to have been taken under these Rules and any selection process initiated or appointments made pursuant to 2001 Rules shall be deemed to have been done under these Rules.

<P11M>APPENDIX-XII

THE FAMILY COURTS (JHARKHAND HIGH COURT)

RULES, 2004

THE FAMILY COURTS (JHARKHAND HIGH COURT) RULES, 2004

Noti. No. 1.A./Court Gathan 102/2003-2060/J, dated the 20th July, 2004, No. 6543, dated the 15th July, 2004.**Published in Jharkhand Gazette, Extraordinary, No.226 dated July 21st, 2004 and issued by Hon'ble Jharkhand High Court on 14.7.2004. —In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984 (Central Act No. 66 of 1984), and all enabling provisions in that behalf, the High Court of Jharkhand hereby make and prescribe the following Rules to regulate the proceedings for the Family Courts in the State of Jharkhand.

In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984, the High Court of Jharkhand are pleased to prescribed the following Rules for Family Courts in the State of Jharkhand.

RULES

1. Short title.—(a) These rules may be called the Family Courts (Jharkhand High Court) Rules, 2004.

(b) Commencement.—These rules shall come into force from 15th August, 2004.

(c) Application.—These rules shall apply to the Family Courts established in the State of Jharkhand under Section 3 of the Family Court Act, 1984.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) “Act” means the Family Courts Act, 1984;

(b) “Centre” means a counseling centre;

(c) “Counsellor” means a person referred to in Section 6 of the Act;

(d) “Court” means the Family Court established under Section 3 of the Act;

(e) “High Court” means the High Court of Jharkhand;

(f) “Institution” means any institution or organisation engaged in social welfare;

(g) “Petition” shall include an application under Chapter IX of the Criminal Procedure Code, unless the

subject matter or context requires otherwise;

(h) All other words and expressions used but not defined in these rules and defined in the Act, or in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973, shall have the meaning respectively assigned to them in the Act, or, as the case may be, in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973.

3. Working hours.—(i) The office of the Family Court shall be open daily except authorised holidays for transaction of office work between 10.00 a.m. and 5.00 p.m.

(ii) The Judges of the Family Court shall ordinarily sit in the Court between 10.30 a.m. — 4.30 p.m. on working days of the Family Court with recess between 1.00 p.m. — 1.30 p.m.

(iii) The Judges may, for expedience, hold proceedings of the Court beyond the working hours as prescribed in sub-rule (ii) above, and even on holidays :

Provided no such proceedings shall be held under sub-rule (iii) except with the consent of the parties to the proceeding.

(iv) The Family Court shall hold its sitting in open or in camera as determined by it in each case, but shall hold the proceedings in camera if either party so desires.

(v) No act of the Family Court shall be invalid by reason of holding or continuing its sitting at any place of its choice or on any holiday or outside normal working hours, when such sitting is informed to the parties in advance.

4. Place of sitting.—The judge of the Family Court may hold sitting at places other than the ordinary place of sitting in consultation with the parties to the proceedings; the provision of the Legal Aid Scheme may be invoked in appropriate cases in the proceedings under the Act.

Institution of proceedings :

(a) All proceedings instituted before a Family Court shall be by way of an application as per form No. 1 appended to these rules which should be duly verified by the petitioner. Interlocutory application in the proceeding to be instituted or already instituted shall be filed in form No. 2 after being duly verified by the applicant. The petition in form No. 1 or the interlocutory application in form No. 2 can be in any language falling in Schedule VIII to the Constitution.

(b) There shall be no Court fee or any other fee in respect of any petition or any interlocutory application filed before the Family Court.

(c) In respect of application under Section 125 of Cr PC or other application under Chapter IX of the Criminal Procedure Code the provision of that Code will apply.

(d) The application may be filed before Family Court as permitted under any law which also includes provisions in the following laws viz.

(i) Chapter IX of the Criminal Procedure Code, 1973 (2 of 1974).

(ii) Hindu Marriage Act, 1955 (25 of 1955).

(iii) Maintenance under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956).

(iv) Guardianship of the person or custody of or access to any minor under the Hindu Minority and Guardianship Act, 1956 (32 of 1956).

(v) Dowry Prohibition Act, 1961 (28 of 1961) for an order for injunction in circumstances arising out of marital relationship.

(vi) Hindu Marriage (Validation of Proceedings) Act, 1960 (19 of 1960).

(vii) Personal law applicable to Muslims in including :

(a) Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937).

(b) Dissolution of Muslim Marriages Act, 1939 (8 of 1939).

(c) Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).

(viii) Parsi Marriage and Divorce Act, 1936 (3 of 1936) which can be instituted or taken before the Parsi District Matrimonial Courts constituted under Sections 18 and 20 of the said Act.

- (ix) Indian Christian Marriage Act, 1872 (15 of 1872).
- (x) Indian Divorce Act, 1945.
- (xi) Special Marriage Act, 1954 (43 of 1954).
- (xii) Child Marriage Restraint Act, 1929 (19 of 1929).
- (xiii) Anand Marriage Act, 1909 (7 of 1909).
- (xiv) Arya Marriage Validation Act, 1937 (19 of 1937).
- (xv) Foreign Marriage Act, 1969 (33 of 1969).
- (xvi) Suits or proceedings relating to Part B States Marriages Validating Act, 1952 (1 of 1952).
- (xvii) Guardians and Wards Act, 1890 (8 of 1890).

6. Filing of petition.—A petition or any other application shall be filed with two copies signed by the parties alongwith as many copies to be sent to all the respondents by an officer designated for this purpose. One copy of such petition or application shall be forwarded by the designated officer of the Family Court to the Counsellor forthwith.

7. Notice to respondent.—Notice of the proceeding including interlocutory application shall be issued in form No. 3 appended to these rules alongwith a copy of the petition of the application as the case may be in respect of matter under Chapter IX of the Criminal Procedure Code the summons to appear and answer shall be in form No. 4.

8. Name and address of the party or of the representative to be stated in every process.—The name and address of a party or of the representative appearing for a party shall be stated in every notice, summons, witness summons, interim application, warrant and every process of the Court issues at the instance of such party or representative.

9. Notice, summons, etc. how attested and signed.—All notices, Summons, Rules, Orders, Warrants and other mandatory processes shall be sealed with the seal of the Court and shall be signed by the designated officer of the Court.

10. Returnable date of notice, summons.—Unless otherwise ordered the notice, summons shall be made returnable three weeks after the date of the filling of the petition, if the respondent resides within the local limits of the Court and five weeks after the date of the filling of the petition, if the respondent resides outside the said limits.

11. Mode of service of notice, summons.—(a) The notice, summons shall be served in the manner prescribed in the Code of Civil Procedure save and except in proceedings under Chapter IX of the Criminal Procedure Code where the provisions of the Code will apply. Alongwith the notice, summons a copy of the petition and exhibit thereto shall be sent.

(b) In addition to the normal process of service by the Court, the applicant will be at liberty to serve upon the respondent, the notices, summons of the Court alongwith copy of the petition and exhibits either through person or through other recognisable mode of service including registered post and shall file affidavit of service upon the respondent.

12. Proof of service of summons.—It has to be shown by affidavit of applicant or other evidence that the notices, summons were served upon the respondents.

13. Substituted service.—In case of failure to serve by normal process, the Court on an oral/written application of the applicant may direct for serving upon the respondents by substituted mode i.e. through pasting publication in the newspaper, etc. and applicant shall file affidavit stating as to the mode adopted for service of summons.

14. Copy of petition to be furnished to the respondent.—Any respondent who ask for the copy on the ground that he has not received the copy of the petition or that he has not received complete copy, the applicant shall furnish the complete copy with all exhibits to the respondents.

15. The provisions under Order 1 of Civil Procedure Code for addition of a necessary party or a proper party shall be applicable to a proceeding before the Family Court.

16. Proceedings before the Court shall be taken up in the presence of the parties, and a legal practitioner shall be allowed to appear only as amicus curiae, if the Court finds it necessary in the interest of justice.

17. Directions on the returnable date.—On the returnable date of the notice, summons, the petition shall be placed for directions before a Judge of the Family Court. On that day, the designated Counsellor shall attend the Court of the Judge giving directions. The Judge shall, in consultation with the Counsellor, direct the parties to attend a specified date by which Counsellor shall file a memorandum setting out the outcome of the proceeding before him. On that day the Court will pass further order and directions as it deems fit and proper.

18. Role of the Counsellor.—The Counsellor appointed to counsel the parties shall fix time and date of appointment. The parties shall be bound to attend the counsellor on the date and at the time so fixed if either of the parties fails to attend the Counsellor on the date and time so fixed, the Counsellor may fix another date and shall communicated the same to the absentee party by registered post. In case of default by either of the parties on the adjourned date, the Counsellor shall submit a report to the Court and on receipt of such report, the Court may proceed with the matter without prejudice to other powers of the Court to take action against the defaulting parties.

The Counsellor entrusted with any petition on appearance of the parties before her/him shall assist and advise the parties regarding the settlement of the subject matter of dispute and shall endeavour to help the parties in arriving at conciliation.

The counsellor may in discharge of him/his duties, visit the home of either of the parties and interview the relatives, friends, and acquaintances of either of the parties.

The counsellor in discharge of him/his duties may also seek such information as she/ he deems fit from the employed of either of the parties and such requisition for information shall be made through the Court.

The counsellor may take the assistance of any organisation, institution or agency in discharge of her/his duties.

the counsellor shall submit a report to the Court as and when called for to assist the Court in deciding the case in hand. The report may, inter alia contain the following points :

- (a) Living environment of the parties concerned.
- (b) Personalities.
- (c) Relationship.
- (d) Income and standard of living.
- (e) Educational status of the parties.
- (f) Status in society.
- (g) Counsellor's findings.

The Counsellor may also supervise the child/children if and when called upon by the Court.

19. Confidentiality of information.—Information gathered by the counsellor or any statement made before the counsellor or any notes or report prepared by the counsellor shall be treated as confidential and the counsellor shall not be called upon to disclose such information, statement, notes or report to any Court except with the consent of both the parties.

20. Efforts for arriving at settlement.—(1) Every Family Courts shall maintain separate lists of :

- (a) Institutions and organisations engaged in social welfare together with names and addresses of representatives of each institutions or organisations.
- (b) Person professionally engaged in promoting the welfare of the Family with their addresses.
- (c) Persons working in the field of social welfare with their addresses.

Report from institution, organisation etc. (1) A Family Court may call for report as regards efforts made or to be made by the institution organisation or persons referred to in Section 5 of the Act :

Provided that where efforts for amicable settlement are continuing or are deferred, the Family Court may require the institution, organisation or person to submit before it an interim report.

21. When the parties arrive at a settlement before the Counsellor relating to the dispute or any part thereof such settlement shall be reduced into writing and shall be signed by the parties and countersigned by the counsellor.

HEARING OF PETITIONS IN COURT

22. Adjournment by the Court.—The petition so fixed shall not be adjourned by the Court unless there are circumstances justifying such adjournment and to meet the ends of justice. The Court shall record its reasons for adjourning a matter.

23. Memorandum of evidence.—The Court shall record only the substance of what the witness deposes and prepare a memorandum accordingly which shall be read and explained to the witness and the memorandum of the said substance recorded by the Court shall be signed by the witness and the presiding officer of the Court and shall form part of the record. The evidence taken on affidavit, if any, shall also form part of the record of the Court. The judgment shall contain a concise statement of the case, the point for determination the decision thereon and the reasons for such decision.

24. The Court shall furnish to the parties to the proceedings before it a copy of the judgment certified to be a true copy free of cost.

25. Appeal under Section 19(1) of the Act shall be in the manner of appeals against the original decree or order in a civil proceedings but there shall be no Court fee payable for the appeal.

26. The rules framed under the Guardians and Wards Act, 1890 by the Patna High Court and published in Bihar Gazette-III dated the 27th May, 1931 and 8th September, 1933 shall be applicable in matter relating to Guardians and Wards Act, 1890 to the extent they are not inconsistent with the provisions of the Act or the Rules framed thereunder.

27. Application for Guardianship.—All petitions for guardianship other than applications over which the High Court has jurisdiction, shall be filed before the Family Court.

28. Contents of the Application.—Every petition for guardianship when it is by a person other than the natural parent or natural guardian of the child shall be accompanied by a Home Study Report of the person asking for such guardianship and his/her spouse, if any, prepared by an approved association of social welfare agencies etc. or a suitably trained social worker, from the list of agencies and/or persons for the purpose of their association with the Court approved by the Government in the rule made under Section 5 of the Act, in consultation with the High Court.

29. In case of a child placed in guardianship the Court may, at any time direct a Counsellor attached to the Court to supervise the placement of the child and submit a report thereon to the Court in such manner as the Court may deem fit.

30. A child study report of the child proposed to be taken in guardianship together with a photograph of the child should also be filed in all petitions for guardianship, as required under Rule 23 of the Rules framed under the Guardian and Wards Act, 1890. Such report shall be in a particular Form prescribed by the Court when the child is institutionalised (or Court committed). The report shall be countersigned by the petitioner.

31. A proceeding before the Family Court shall not become invalid by reason only of non-compliance with any of the procedural requirement prescribed herein.

INTERIM APPLICATIONS

32. Interim application.—All interim applications to the Court shall be separately numbered as “Interim Application No.....” In Petition No.....

33. Interim application while matter is pending before Counsellor.—An interim application may be made even while the matter is pending before a Counsellor.

34. Report from the Counsellor.—The Court may ask the Counsellor to submit an interim report for the purposes of such an application before deciding and interim application. The Family Court Rules, 2002 relating to report to be submitted by Counsellor, shall mutatis mutandis apply to interim reports also.

35. Officers.—The High Court may authorise and empower judge of the Family Court, or if, there be

more judges than one in a Family Court the principal judge of such Court to appoint so many and such clerks and other ministerial officers as may be necessary for the administration of justice and due execution of all powers and authorities exercisable by a Family Court.

Provided that the appointments of officers and ministerial staff shall be subject to any rules or restriction as may be prescribed or imposed under the Act.

36. The proceedings before the Court shall be heard and disposed of as expeditiously as possible, preferably within 3 months, and in achieving this objective the rules or procedure may not rigidly be adhered to.

37. Control of High Court.—Every Principal Judge, and Judge of Family Court shall be under administrative and disciplinary control of the High Court.

38. Power of High Court to transfer Judges, officers etc. without prejudice to the administrative and disciplinary control of the High Court under Rule 12, such Court or a Judge thereof authorised under general or special order in this behalf by such Court, may where it is considered necessary or expedient so to do, transfer any Principal Judge, Additional Judge, Judges or any officer or Ministerial official of one Family Court to another Family Court in this state or retransfer such Principal Judge, Additional Judge, officer or ministerial official, as the case may be and every such principal Judge, Additional Judge or Judge, official or ministerial official shall comply.

39. Power of High Court to issue directions.—For carrying out the purposes of the Act and for ensuring the uniformity of practice to be observed by Family Courts and for expeditious disposal, the High Court may from time to time, supervise and inspect the Family Courts and issue directions/circulars etc. to the Family Courts.

40. Judge not to try a case in which he is interested.—No Judge shall hear or decide any case to which he is party or in which he/she is personally interested.

41. The Family Courts may use such forms and containing such particulars as may be approved by the High Court.

42. Powers to call for information etc.—The High Court may require Family Courts to maintain such registers and records and containing such particulars as may be approved by the High Court.

FORM NO. 1

IN THE FAMILY COURT OF.....

Petition No.....

Between

Mrs/Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Petitioner's

And

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Respondent

Petition under Section.....for.....

The abovenamed petitioner respectfully submits as under :

1. That the petitioner and respondent are legally married..... and Their marriage was solemnized on..... at..... according to..... customs. After the marriage both the petitioner and respondent had been living/ lived together as husband and wife at..... Out of the wedlock the couple was blessed with the child aged..... named..... another child aged..... named.....

2. The petitioner submits that (give the grievance of the petitioner against the respondent with full particulars)

(a)

(b)

3. This petition is not presented in collusion with the respondent and there is no unnecessary or improper delay in institution of these proceedings.

4. Cause of action for the petition arose on (date) when the marriage of the petitioner with respondent was performed. It also arose on several occasions when the respondent behaved and committed.....

5. The petitioner and the respondent both last lived together at..... (ow where the marriage took place or where the respondent at the time of presentation of the petition resided) which is within the territorial jurisdiction of this Hon'ble Court.

PRAYER

6. The petitioner therefore prays that this Court may be pleased to pass an order directing.....

Place :

Date :

Petitioner

Verification

I.....daughter/son of..... aged.....resident of..... do hereby declare that the above facts stated in the petition are true and correct to the best of my knowledge, information and belief. Hence, verified on this the.....day of month.....

Petitioner

FORM NO. 2

IN THE FAMILY COURT OF.....

Interlocutory Application No.....

In

Petition No.....

Between

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Petitioner's

And

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Respondent

Interlocutory Application under Sectionfor

The abovenamed petitioner respectfully submits as under :

1. That the petitioner and respondent are legally married.... and Their marriage was solemnized on..... at..... according to..... customs. After the marriage both the petitioner and respondent had been living/ lived together as husband and wife at..... Out of the wedlock the couple was blessed with the child aged..... named..... another child aged.....named.....

2. The petitioner submits that (give the grievance of the petitioner against the respondent with full particulars)

(a)

(b)

PRAYER

The petitioner therefore prays that this Court may be pleased to pass an order directing.....

Place :

Date :

Petitioner

Verification

I.....daughter/son of..... aged.....resident of..... do hereby declare that the above facts stated in the petition are true and correct to the best of my knowledge, information and belief. Hence, verified on this the.....day of month.....

Petitioner

FORM NO. 3

IN THE FAMILY COURT OF.....

Petition No.....of.....

.....Petitioner

Versus

.....Respondent

To

Whereas the above named petitioner has instituted a petition against you, as set out in the petition (annexed with the petition & annexure)

And whereas the petition will be placed for directions on..... day of.....

You are hereby summoned to appear before the Family Court to answer. The petitioner’s claim on the said.....day of..... at O’clock and

Take notice that on the day before mentioned after hearing parties who appear directions will be given by the Judge as to the date of hearing before a Counsellor of the Family Court and other matters concerning the petition and

Take further notice that if you fail to appear before the Judge on the day the petition may be ordered to be set down on Board on the same day or any subsequent day as ‘undefended’ and you will be liable to have a decree or order passed against you.

Witness.....Judge at.....aforesaid this.....day of.....

Registrar

FORM NO. 4

IN THE FAMILY COURT OF.....

Petition No.....

Between

Mrs/Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Petitioner's

And

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Respondent

Petition for maintenance under Section 125 of Criminal Procedure Code.

The abovenamed petitioner respectfully submits as under :

1. That the petitioner and respondent are legally married..... & Their marriage was solemnized on..... at..... according to..... customs. After the marriage both the petitioner and respondent had been living/ lived together as husband and wife at..... Out of the wedlock the couple was blessed with the child aged..... named..... another child aged.....named.....

2. The petitioner submits that (give the grievance of the petitioner against the respondent with full particulars)

(a)

(b)

3. The petitioner has no resources/limited resources to maintain herself and her minor children. She is presently dependent upon her parents, who have their own expenses and may not be in a position to support the petitioner for long period.

4. That the petitioner on..... called upon the respondent to provide money for maintenance for herself and her minor children but as yet no amount towards maintenance has been received from the respondent.

5. That the respondent is a person with means and has the following property, monthly income etc.

(a)

(b)

(c)

6. In the circumstances stated above there is no alternative for the petitioner and her minor children but to approach this Court for maintenance.

PRAYER

The petitioner therefore prays that this Court may be pleased to pass an order directing the respondent to pay Rs..... towards maintenance of the petitioner and Rs.....towards maintenance of the minor children.

Place :

Date :

Petitioner

<P11M>APPENDIX-XIII

THE JHARKHAND HINDU MARRIAGE REGISTRATION

RULES, 2002Published in Jharkhand Gazette Extraordinary No. 6, dated January 3, 2003.**

JHARKHAND HINDU MARRIAGE REGISTRATION RULES, 2002

S.O.-211, dated the 3rd January, 2003/No. 3055.—In exercise of the powers conferred by Section 8 of the Hindu Marriage Act, 1955 (Act No. 25 of 1955), the Government of Jharkhand is pleased to make the following rules :—

1. Short title, extend and commencement.—(1) These rules may be called the Jharkhand Hindu Marriage Registration Rules, 2002.

(2) This shall extend to the whole of Jharkhand.

(3) They shall come into force with immediate effect.

2. Definition.—In these rules, unless the context otherwise requires—

(a) “the Act” means the Hindu Marriage Act, 1955 (Act No. 25 of 1955);

(b) “Registrar-General” means the Inspector-General of Registration appointed under Section 3 of the Registration Act, 1908 (Act No. 16 of 1908);

(c) “Marriage” means a Hindu Marriage to which the Act applies;

(d) “Registrar” means the Registrar of Hindu Marriage having jurisdiction under Rule 3;

(e) “Registration of the District” means the Registrar of the District appointed under Section 6 of the Registration Act, 1908 (Act No. 16 of 1908) and includes the officer performing the duties of a Registrar under Sections 10 and 11 of the Act;

(f) “Sub-Registrar” means a Sub-Registrar appointed by the State Government under the Registration Act, 1908 (Act No. 16 of 1908) and includes a person so appointed under Section 12 of the Act.

3. Jurisdiction to Registrar and Sub-Registrar.—For the purposes of these rules, every Sub-Registrar within the limits of his jurisdiction and every Registrar of the District within the district shall exercise the powers and perform the duties of Registrar of Hindu Marriages.

4. Registration of Marriages.—(1) The parties to any marriage may, on payment of the fee specified in Rule 10, have the particulars relating to the marriage entered in the Hindu Marriage Registrar kept for the purpose in the office of the Registrar or Sub-Registrar.

(2) An application for registration of a marriage shall be made in duplicate to the Registrar or Sub-Registrar within whose jurisdiction the marriage is solemnized or within whose jurisdiction the husband permanently resides and shall be in Form ‘A’ of the Schedule appended to these rules :

Provided that, if the application is made to the Registrar or Sub-Registrar within whose territorial jurisdiction the marriage is solemnized and the husband does not permanently reside within such jurisdiction, it shall be made in triplicate and the third copy of the application shall be forwarded by the Registrar receiving the application to the Registrar within whose jurisdiction the husband permanently resides :

Provided further that an application for registration of marriage shall ordinarily be presented to a Sub-Registrar having jurisdiction but the Registrar of the District may in his discretion can also entertain any such application.

(3) The application mentioned in sub-rule (2) shall be accompanied with a certificate issued by a Gazetted Officer, Mukhia, Up-Mukhia of a Gram Panchayat or Pramukh of a Panchayat Samiti as to the identity of the parties to the marriage and the correctness of other particulars appearing in the application and shall be presented personally to the Registrar concerned. Where the persons presenting the application so desires he shall be given a receipt for the application in the following form :

Received an application for registration of marriage between.....and presented by.....

Dated.....

Signature.....

[Registrar or Sub-Registrar of Hindu Marriages.....]

5. Hindu Marriage Register.—(1) A Hindu Marriage Register shall be bound volume of one hundred leaves the pages having been machine numbered consecutively and shall be maintained by Registrar of the

District and Sub-Registrar.

(2) The Registrar and Sub-Registrar shall certify under his signature on the title page of every blank register issued to him, the number of pages actually contained in such register and shall also note the date on which the register was received by him.

(3) At the close of every calendar year, the Registrar or Sub- Registrar shall certify the number of applications registered during the year and whenever a register is completed the Registrar or Sub-Registrar shall also certify the number of applications registered in that particular register.

(4) The registers used by the Registrar or Sub-Registrar shall be serially numbered.

6. Filing of application.—Each application made to the Registrar or Sub-Registrar under Rule 4 shall be filed by him in the Hindu Marriage Register by pasting it on the first blank leaf available in the register.

7. Endorsement of application.—(1) Each application and its duplicate and also its triplicate wherever required shall be endorsed by the Registrar or Sub-Registrar with the following endorsement duly signed by him on the reverse thereof, namely :

The application was received by me on20.....and it is filed at serial No.....of 20.....on page..... of volume..... of the Hindu Marriage Register, maintained under the Hindu Marriage Registration (Jharkhand) Rules 2002.

Date :.....

(Signature)

(Registrar or Sub-Registrar of
Hindu Marriages)

(2) The Registrar or Sub-Registrar shall, as soon as may be, inform the applicants in writing that their marriage has been duly registered.

8. Duplicates.—On or before the seventh day of each month the Sub-Registrar shall send to the Registrar of the district all duplicate copies of the application received by him during the preceding month along with a covering letter indicating therein the serial numbers of the duplicate copies of the application sent therewith and if no application was received in the previous months then a letter indicating that no application was received.

9. Filing of the application by Registrar.—On receipt of the duplicate copies of the application sent under Rule 8, the Registrar of the district shall file or cause to be filed such duplicate copies by pasting them in registers maintained for that purpose by the Registrar.

10. Schedule of Fees.—(1) The fee for entertaining an application for registration of a marriage shall be—

(i) Rs. 250.00 if the application for registration of a marriage is made within two months of the date of its solemnization.

(ii) Rs. 500.00 if the application for registration of a marriage is made after two months of the date of its solemnization.

Fee shall be paid to the Registrar or Sub-Registrar in cash.

(2) Certified extract from the Hindu Marriage Register shall, on an application to the Registrar or Sub-Registrar be given by him on payment of a fee of Rs. 250.00.

(3) For making a search the fee shall be—

(i) if the entry relates to the current year, Rs. 75.00;

(ii) if the entry relates to the immediately previous year, Rs. 150.00;

(iii) if the entry relates to the year before that, Rs. 200.00 and so, with an addition of Rs. 50.00 for each earlier year.

(4) Above fees for the Registration of marriage shall necessarily be deposited through Treasure Chalan under “Major Head-0070- Other Administrative Services-Sub-Major Head-60-Other Services, Minor Head-108-Marriage Fees- Sub-Head-Registration Fees under Hindu Marriage Act.”

11. Form of receipt.—A receipt from the receipt book in Form No. B of the Schedule appended to these rules shall be issued for acknowledging the fees paid under these rules. The receipt book shall be bound volume of one hundred leaves each with foils and counter-foils, which shall be machine numbered consecutively.

12. Cash book.—The Registrar or Sub-Registrar shall maintain or cause to be maintained a cash book in Form “C” of the Schedule to these rules. All fees received under the rules shall be brought to account in the cash-book every day and the Registrar or Sub-Registrar shall sign the same in token of his verifying the correctness of the day’s total collection of fees.

13. Power of Registrars.—(1) If an application received by the Registrar or Sub-Registrar under Rule 4 is incomplete or defective in any respect or if an application for a certified extract from the Marriage Register is not accompanied by the fee specified in Rule 10, the Registrar or Sub-Registrar shall require the parties to the marriage to remove the defect or pay the said fee, as the case may be, within such time as may be specified by him failing which the application shall be rejected and filed in the Register as shown in Form-D of the Schedule appended to these rules.

(2) If the Registrar or Sub-Registrar receiving such application has no jurisdiction to receive the same, he shall return it to the applicant for being presented to the proper authority filed in the Register as shown in Form-D of the Schedule appended to these rules.

(3) Where an objection to any application for registration is received by a Sub-Registrar, he shall refer the same to the Registrar of the district, who shall decide the same as also objections received by him after hearing the parties affected thereby and his decision, subject to any decree or order of a competent Court, shall be final in so far as the question of action on the application for registration is concerned.

(4) The particulars of all applications which are returned or of which registration is refused as aforesaid shall be noted in a register in Form-D of the Schedule appended to these rules.

14. Superintendence.—The Registrar shall perform his duties and exercise his power under the general superintendence of the Registrar General and the Sub-Registrar shall perform his duties and exercise his powers under the general superintendence of the Registrar of the District.

15. Forms.—Blank forms of application for registration shall be supplied by the Registrar or Sub-Registrar free of charge to the parties to a marriage. The parties may, however, at their option use legibly typed forms.

16. Preservation of Registers and records.—(1) The Hindu Marriage Register and the indices referred to in Rule 17 shall, after six years of their completion, be consigned to, and preserved permanently in the Central Record Room at the headquarters of the registration district.

(2) All other records and papers such as receipt books, cash books, application for extracts from the Register, etc. shall be destroyed by the Registrar or Sub-Registrar after the expiry of a period of six years.

17. Indexing of entries in the register of marriage.—All the entries in the Hindu Marriage Register shall be indexed and the indices shall be in two forms, namely, one in the name of the bridegroom and the other in the name of the bride, and such indices shall be available for inspection to any person on payment of inspection fee of Rs. 50.00 per year of record.

[File No. L.G.-14/2000]

SCHEDULE

Form-A

[See Rule 4(2)]

Application for Registration of Hindu Marriage

To,

The Registrar of Hindu Marriages

Sir,

A Hindu Marriage in accordance with the provisions of the Hindu Marriage Act, 1955 has been

solemnised between us, the undersigned parties, on..... and we request that the following particulars of our marriage be registered in the Hindu Marriage Register.

Particulars of Marriage

1. Date of Marriage
2. Place of Marriage (with sufficient particulars to locate the place)
3. Particulars of the bridegroom :
 - (a) Full name and occupation
 - (b) Domicile
 - (c) Age (which shall not be less than 21 : see Section 5)
 - (d) Usual place of residence
 - (e) Address at the time of application
 - (f) Status at the time of marriage, whether

Unmarried

Widows

Divorcee

Dated.....

(Signature of the Bridegroom)

4. Particulars of the bride
 - (a) Full name and occupation
 - (b) Domicile
 - (c) Age (which shall not be less than 18 : see Section 5)
 - (d) Usual place of residence
 - (e) Address at the time of application
 - (f) Status at the time of marriage, whether

Unmarried

Widows

Divorcee

Dated.....

(Signature of the Bride)

5. Particulars of the bridegroom's father :
 - (a) Full name
 - (b) Age
 - (c) Occupation
 - (d) Usual place of residence
 - (e) Address at the time of application
 - (f) Whether alive or dead

Dated.....

(Signature of the father of Bridegroom)

(N.B.—Signature of the bridegroom's father is not obligatory)

6. Particulars of the bride's father or other guardian :
 - (a) Full name
 - (b) Age
 - (c) Occupation
 - (d) Usual place of residence
 - (e) Address at the time of application

Dated.....

(Signature of the Father or guardian bride)

(N.B.)—Signature of the bride's father or guardian is not obligatory)

7. Particulars of the officiating priest :

(a) Full name

(b) Age

(c) Usual place of residence

(d) Address

(N.B.)—It shall not be obligatory to enter particulars of the officiating priest if the marriage took place more than a year before the date of the application. His signature is not obligatory)

Dated.....

Signature of the Officiating Priest)

Declaration.—I solemnly declare that the particulars given in this application in so far as they relate to myself and to the solemnisation of marriage are true to the best of my knowledge and the rest are based on information received and believed to be true.

Signature of Bride.

8. Signature of Bridegroom

Dated.....

Dated.....

9. 1. Witness :

2. Witness.....

(a) Full name

(a) Full name

(b) Address

(b) Address

(Signature).....

(Signature).....

Dated.....

Dated.....

Certified by.....(designation).....(a gazetted officer, Mukhia, Up-Mukhiya of a Gram Panchayat or Pramukh of a Panchayat Samiti as to the identity of the bridegroom and the bride and other particulars of this application is appended hereto.

Note.—Certificate may be by more than one such officer where one cannot certify the identity of both the parties or all other particulars.

Form-B

[See Rule 11]

Fee Receipt

(Duplicate)

- 1. Serial number :
- 2. Date of Receipt :
- 3. From whom received :
- 4. On what account received :
- 5. Rule under which chargeable :
- 6. Amount of fees.

Station.....

Signature of the Marriage Registrar

Dated.....

Form-C

[See Rule 12]

Cash Book

Receipt No. and date, Details of amount of realisation, Amount, Signature of Registrar of Marriages and date, Amount Credited into treasury, Challan No. and date, Signature of Registrar of Marriages and date, Remarks

1, 2, 3, 4, 5, 6, 7, 8

^, ^, Rs. P., ^, Rs. P., ^, ^, ^

, +, +, +, +, +, +, +

Form-D

[See Rule 13]

Register of application returned or rejected

Sl. No., Date of presentation and the name of the person presenting the application, Parties to the marriage and the date of marriage, Whether Refused or returned, Reasons for Refusal or return

1, 2, 3, 4, 5

, +, +, +, +

APPENDIX-XIV

THE JHARKHAND HIGH COURT JUDGES (MEDICAL FACILITIES) REIMBURSEMENT RULES, 2004

THE JHARKHAND H.C. JUDGES (MED. FACI.) REIMBURSEMENT RULES, 2004

<B%-2>Noti. No. 10/R-1-199/04-28(10) dated the 13th, January, 2005.<D%0>**Published in Jharkhand Gazette Extraordinary No. 19, dated January 17, 2005. — In exercise of powers conferred under Sections 23(1) and (2) read with Section 23(D)(2) of the High Court Judges (Salaries and Conditions of Service) Act, 1954, the State Government of Jharkhand hereby makes the following Rules, namely :

1. Short title and commencement.—(1) These rules may be called The Jharkhand High Court Judges (Medical Facilities) Reimbursement Rules, 2004.

2. Commencement.—It shall be deemed to have come into force with effect from the First day of September, 2004.

3. Definitions.—In these Rules, unless the context otherwise requires :—

(a) “Act” means The High Court Judges (Salaries and Conditions of Service) Act, 1954, as modified from time to time.

(b) “Attendant” means any person attending to the Judge or his family within or outside the State during the course of treatment.

(c) “Chief Justice” means the Chief Justice of the Jharkhand High Court.

(d) “Family” means the wife or in case of Judge has more than one legally married wife, wives/legitimate children/parents of the Judge who are dependent upon him.

(e) “Government” means the State Government of Jharkhand.

(f) “Judge” means a Sitting or Retired Judge of the Jharkhand High Court and includes its Chief Justice. It also includes of a Judge who has retired from the Patna High Court on or before the Fourteenth day of November, year Two Thousand and who is residing in the State of Jharkhand.

(g) “Medical Attendant” means the Doctor/Medical Officer attending to the Judge or his family.

(h) “Treatment” means all kinds of recognized medical treatment and the use of all medical and surgical facilities available in Government Hospital/Dispensary/Dispensaries/ Private. Hospitals/Nursing Homes/Clinic or offered by any registered private medial practitioner and includes treatment at residence of the Judge/ Doctor concerned and includes dental treatment. It also includes the employment of such pathological, radiological or other methods as are available.

(i) “State” means the State of Jharkhand.

(j) “Medical Board” means panel of doctors constituted on the advice of Hon’ble Chief Justice of the High Court.

COMMENT

Medical Expenses—Reimbursement of.—Whether a retired Judge of High Court appointed as the President of Jharkhand State Consumer Disputes Redressal Commission is entitled to the same privilege and perquisites which he was enjoying as a sitting Judge of the High Court in the matter of reimbursement of medical bills—Sitting Judge of High Court retired in 2001—Reappointed as the President State Consumer Disputes Redressal Commission without stipulating any fresh condition of service—Entitled to get reimbursement of his medical bills from the State Government till continued to be the President of the State Commission [Consumer Protection Act, 1986, Sections 16, 20 and 30—Consumer Protection Rules, 1987, Rule 11—Bihar Consumer Protection Rules, 1987, Rule 6—Jharkhand High Court Judges (Medical Facilities)

Reimbursement Rule, 2004, Rule 3(f)].—Justice Choudhary S.N. Mishra v. State of Jharkhand through the Chief Secretary, Project Building Dhurwa, Ranchi & Ors., 2005 (4) JCR 25 (Jhr).

4. Every Judge including the Chief Justice as defined in Rule 3(c) and (f) and his family as defined in Rule 3(d) shall be entitled to free medical attendance and treatment in any Government or private hospital/ Dispensary/ Private Hospital/Nursing Home or by any Government or private registered medical practitioner or treatment at the residence of the Judge/Doctor concerned.

5. On the advice of the Medical Attendant/Medical Board, as the case may require, the Judge and his family shall be entitled for treatment at any place within the country in any Government or private hospital/ Dispensary/ Nursing Home or by any Government or private registered medical practitioner. In such case, the Judge and/or his family, as the case may be, shall be entitled to go to such place with an Attendant and/or he Medical Attendant by AC 1st Class or by Air/Flight to and from and the traveling cost so incurred will be reimbursable to such Judge/Family.

In the matter relating to traveling cost as aforesaid 90% of the fare shall be paid in advance on presentation of Bill/Invoice and the remaining amount towards the cost of traveling shall be reimbursed on presentation of the used tickets/or receipts.

6. The Judge, as defined in Rule 3(b) and (e), shall be entitled for reimbursement of medical expenses on production of the Bill(s)/Cash- memo(s)/Receipt(s) of the Medical shop(s)/Druggist(s)/Government Doctor/ Hospital/Clinic, registered medical practitioner/ private hospital. The cost of medicines including fees of the Doctor, expenses on nursing, charges of the hospital including surgical charges and that of pathological, radiological or of the other methods of treatment taken recourse to, shall be reimbursable by the Government.

In the matter relating to medical treatment aforesaid, 90% of the estimated bill shall be paid in advance on presentation of Bill/Estimate and the remaining amount towards the cost of medical treatment shall be reimbursed on presentation of the receipts.

7. On presentation of the Bill(s)/Cash-memo(s)/Receipt(s) including the cost of medicine(s) and that of other treatment, as mentioned above, shall be presented to the Registrar General of the Jharkhand High Court or before any other Officer of the Registry nominated by the Chief Justice who will be deemed to be the sanctioning authority. The said sanctioning authority will reimburse the cost of medicines and that of other treatment(s) with the approval of the Chief Justice or his nominee and shall make the payment to the Judge concerned. The sanctioning authority, as mentioned above, will also reimburse the traveling allowance of the Judge or his family with an attendant and/or the Medical Attendant as mentioned in Rule 5.

8. For the purpose of reimbursement of medical treatment, cost of medicines and travelling cost, the State Government in consultation with the Chief Justice may frame appropriate Regulations, if so required to facilitate processing and payment of such reimbursement.

9. If any question arises as to the interpretation/applicability etc. of these Rules, the same shall be decided by the State Government in consultation with the Chief Justice.

10. If there be any anomaly or difficulty in the implementation of these Rules or in relation to providing medical facilities to the Judges, the same shall be decided by the State Government in consultation with the Chief Justice.

APPENDIX-XV

GUEST HOUSE OF JHARKHAND HIGH COURT

RULES, 2001Published in Jharkhand Gazette, Extra Ordinary No. 211, dated 6th September, 2001.**

GUEST HOUSE OF JHARKHAND HIGH COURT RULES, 2001

JHARKHAND HIGH COURT, RANCHI, Notfn. No. 132 (A), dated 5th September, 2001.

1. The Guest House of the High Court of Jharkhand situated at No. 5, Doranda, shall be used primarily and mainly for the occupation of the Judges of the Supreme Court and the High Courts, serving or retired, and the members of their families, accompanying them. The Guest House may also be used for the occupation of the guests of the serving Judges of the High Court of Jharkhand subject to the permission being granted for this purpose be of the Chief Justice.

2. The Guest House shall not be used for any purpose except as mentioned above. Only in rare and exceptional circumstances, the Guest House may be used for any other purpose, either connected with the functioning of the High Court or otherwise, but only with the express approval of the Chief Justice.

3. The Guest House shall be under the operational control of Deputy Registrar (Protocol) who shall be assisted in this regard by the Court Officer. The Deputy Registrar (Protocol) with the approval of the Registrar General shall ensure that the Caretaker assisted by reasonably adequate, (but not excessive or superfluous) number of staff- members is always in position to look after and manage the affairs of the Guest House.

Subs. by Notif. No. 37-A, dated 15.2.2006 (w.e.f. 6.2.2006). [4. Period of stay.**—In normal circumstances, stay in the Guest House of any Guest or his dependents' private visit shall not exceed three days at one stretch in a month. This may be extended in exceptional cases with the approval of the Chief Justice.]

5. The facilities of the Guest House may be made available to all retired Judges of the Supreme Court or the High Courts including those who are occupying official posts like Chairman/Vice-Chairman of Tribunals or Boards etc. However, such retired Judges of the High Courts who have joined the Bar shall not ordinarily be permitted to stay in the Guest House.

Subs. by Notif. No. 37-A, dated 15.2.2006 (w.e.f. 6.2.2006). [6.** It is expected that persons desirous of using the Guest House shall ensure that they obtain advance reservation under prior arrangement with the Deputy Registrar (Protocol) of the High Court. The charges for use and occupation of the Guest House shall be as under :—

, , Per suite/room

I., For the Hon'ble Judges on official visit connected with functions of the High Court,, Judicial Academy and Jharkhand State Legal Services Authority, no charges

II., For the Hon'ble Judges on purely private visit, Rs. 150/- (per day)

III., For the Hon'ble retired Judges on purely private visit, Rs. 250/- (per day)

IV., For the dependent guest of the Hon'ble Sitting Judges of Jharkhand High Court, Rs. 50/- (per day)]

7. The occupants staying in the Guest House shall ensure that under arrangement with the Caretaker and the cook, provision is made for the provision of meals to them, like lunch, breakfast, dinner etc. charges for all these meals shall be borne by the occupants. In normal circumstances, the charges for the meals shall be determined on the basis of the actual cost of the material used, reasonable amount being allocated separately for cooking charges.

8. The Guests shall be expected to pay for telephone charges. The Caretaker shall maintain a Register for recording the calls made by the Guests.

9. The Caretaker shall be responsible for maintaining absolute cleanliness of the Guest House and provision of clean linens towels to the Guests. The Deputy Registrar (Protocol) shall ensure that enough provision is made in the Guest House by way of storage of linens and towels.

10. It shall be ensured by the Caretaker that at all points of time, in any given situation, without any exception, all electrical point in the Guest House are fully functioning. The same shall hold good for all plumbing operations in the Guest House. The Deputy Registrar (Protocol) or the Court officer shall conduct surprise visits for inspecting these items particularly. If they find that there is any mal-functioning apart from immediate rectification, they may take suitable action against the Caretaker for non-performance of his duties.

11. These Rules shall be subject to such modifications, variation or change as the Chief Justice may

from time to time prescribe or order. The Chief Justice may pass appropriate orders from time to time with respect to any matter or matters not covered in these Rules.

APPENDIX-XVI

JHARKHAND HIGH COURT CASE FLOW MANAGEMENT IN THE HIGH COURT RULES, 2006

JHARKHAND H.C. CASE FLOW MANAGEMENT IN THE H.C. RULES, 2006

In exercise of power conferred by Article 225 of the Constitution of India and Section 10 of the Code of Civil Procedure, 1908 (5 of 1908) and also Rule 15 of the Jharkhand High Court Rules, 2001, the High Court of Jharkhand hereby makes THE CASE FLOW MANAGEMENT RULES in the High Court.

I. DIVISION OF CASES INTO DIFFERENT TRACKS

1. Writ petitions : The High Court shall, at the stage of admission or issuing notice before admission categorise the writ petitions other than the writ of habeas corpus, into three categories depending on the urgency with which the matter should be dealt with; the fast track, the normal track and the slow track. The petitions in the fast track shall invariably be disposed of within a period not exceeding six months while the petitions in the normal track should not take longer than a year. The petitions in the slow track, subject to the pendency of other cases in the Court, should ordinarily be disposed of within a period of two years.

Where an interim order of stay or injunction is granted in respect of liability to tax or demolition or eviction from public premises, etc. shall be put on the fast track. Similarly, all matters involving tenders would also be put on the fast track. These matters cannot brook delays in disposal.

2. Senior officers of the High Court, nominated for the purpose, shall at intervals of every month, monitor the stage of each case likely to come up for hearing before each Bench (the Division Bench or the Single Judge) during that month which have been allocated to the different tracks. The details shall be placed before the Chief Justice or the Committee nominated for that purpose as well as the Judge concerned dealing with cases.

3. The Judge or Judges referred to in clause (2) above may shift the case from one track to another, depending upon the complexity, (urgency) and other circumstances of the case.

4. Where computerisation is available, date will be fed into the computer in such a manner that the Court or Judge or Judges, referred to in clause (2) above will be able to ascertain the position and stage of every case in every track from the computer screen.

5. Whenever the roster changes, the Judge concerned who is dealing with final matters shall keep himself informed about the stage of the cases in various tracks listed before him during every week, with a view to see that the cases are taken up early.

6. Other matters : The High Court shall also divide civil appeals and other matters in the High Court into different tracks on the lines indicated in sub-clauses (2) to (5) above and the said clauses shall apply, mutatis mutandis, to the civil appeals filed in the High Court. The High Court shall make a subject-wise division of the appeals/revision application for allocation into different tracks.

(Division of criminal petitions and appeals into different tracks is dealt with separately under the heading 'criminal petitions and appeals')

II. WRIT OF HABEAS CORPUS

Notices in respect of writ of habeas corpus where the person is in custody under orders of a State Government or Central Government shall invariably be issued by the Court at the first listing and shall be made returnable within 48 hours. The State Government or Central Government may file a brief return enclosing the relevant documents to justify the detention. The matter shall be listed after notice on the fourth working day after issuance of notice, and the Court shall consider whether a more detailed return to the writ is necessary,

and, if so required, shall give further time of a week and three days' time for filing a rejoinder. A writ of habeas corpus shall invariably be disposed of within a period of fifteen days. It shall have preference over and above the fast track cases.

III. MODE OF ADVANCE SERVICE

The Court Rules will provide for mode of service of notice on the Standing Counsel for the respondents wherever available, against whom, interim orders are sought. Such advance service shall generally relate to Governments or public sector undertakings who have Standing Counsel.

IV. FIRST APPEALS TO THE HIGH COURT

1. Service of notice of appeal.—First appeals being appeals on questions of fact and law, the Courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected under Order XLI, Rule 11 at the admission stage. In view of the amended CPC, a copy of the appeal is required to be filed in the trial Court. It has been clarified by the Supreme Court that the requirement of filing of appeal in the trial Court does not mean that the party cannot file the appeal in the appellate Court (the High Court) immediately for obtaining interim order.

In addition to the process for normal service as per the Code of Civil Procedure, advance notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the trial Court itself so as to enable them to inform the parties to appear if they so choose even at the first hearing stage.

2. Filing of document.—The appellant shall, on the appeal being admitted file all the essential papers within such period as may be fixed by the High Court for the purpose of the High Court understanding the scope of the dispute and for the purpose of passing interlocutory orders.

3. Printing or typing of paper-book.—Printing and preparation of paper-books by the High Court should be done away with. After service of notice is effected, counsel for both sides should agree on the list of documents and evidence to be printed or typed and the same shall be made ready by the parties within the time to be fixed by the Court. Thereafter the paper-book shall be got ready. It must be assured that the paper-books are ready at least six months in advance before the appeal is taken up for arguments. (Cause-lists must specify if paper-books have been filed or not.)

4. Filing of written submissions and time for oral arguments.—Both the appellants and the respondents shall be required to submit their written submissions with all the relevant pages as per the Court paper-book marked therein within a month of preparation of such paper-books, referred to in para 3 above.

Cause-list may indicate if written submissions have been filed. If not, the Court must direct that they be filed immediately.

After the written submissions are filed (with due service of copy to the other side) the matter should be listed before the Registrar/Master for the parties to indicate the time that will be taken for arguments in the appeal. Alternatively, such matters may be listed before a Judge in chambers for deciding the time duration and thereafter to fix a date of hearing on a clear date when the requisite extent of time will be available.

In the event that the matter is likely to take a day or more, the High Court may consider having a caution list/alternative list to meet eventualities where a case gets adjourned due to unavoidable reasons or does not go on before a Court, and those cases may be listed before a Court where, for one reason or another, the scheduled cases are not taken up for hearing.

5. Court may explore the possibility of settlement.—At the first hearing of a first appeal when both parties appear, the Court shall find out if there is a possibility of a settlement. If the parties are agreeable even at that stage for mediation or conciliation, the High Court could make a reference to mediation or conciliation for the said purpose.

If necessary, the process contemplated by Section 89, CPC may be restored to by the appellate Court so, however, that the hearing of the appeal is not unnecessarily delayed. Whichever is the ADR process adopted, the Court should fix a date for a report on ADR two months from the date of reference.

V. APPEALS TO THE DIVISION BENCH FROM JUDGMENT OF THE SINGLE JUDGE OF THE HIGH COURT [LETTERS PATENT APPEALS (LPA) OR SIMILAR APPEALS UNDER THE HIGH COURTS ACTS]

An appeal to a Division Bench from judgment of a Single Judge may lie in the following cases :

- (1) Appeals from interlocutory orders of the Single Judge in original jurisdiction matters including writs;
- (2) appeals from final judgments of a Single Judge in original jurisdiction;
- (3) other appeals permitted by any law to a Division Bench.

Appeals against interlocutory orders falling under category (1) above should be invariably filed after advance notice to the opposite counsel (who has appeared before the Single Judge) so that both the sides will be represented at the very first hearing of the appeals. If both parties appear at the first hearing, there is no need to serve the opposite side by normal process and at least in some cases, the appeals against interlocutory orders can be disposed of even at the first hearing. If, for any reason, this is not practicable, such appeals against interim orders should be disposed of within a period of a month.

In cases referred to above, necessary documents should be kept ready by the counsel to enable the Court to dispose of the appeal against interlocutory matter at the first hearing itself.

In all appeals against interim orders in the High Court, in writs and civil matters, the Court should endeavour to set down and observe a strict time-limit in regard to oral arguments. In case of original side appeals/ LPAs arising out of final orders in a writ petition or arising out of civil suits filed in the High Court, a flexible time-schedule may be followed.

The practice direction in regard to first appeal should mutatis mutandis apply in respect of LPAs/ original side appeals against final judgments of the Single Judge.

Writ/appeals/letters patent appeals arising from orders of the Single Judge in a writ petition should be filed with simultaneous service on the counsel for the opposite party who had appeared before the Single Judge or on service of the opposite party.

Writ appeals against interim orders of the Single Judge should invariably be disposed of early and, at any rate, within a period of thirty days from the first hearing. Before writ appeals against final orders in writ petitions are heard, brief written submissions must be filed by both parties within such time as may be fixed by the Court.

VI. SECOND APPEALS

Even at the stage of admission, the questions of law with a brief synopsis and written submissions on each of the propositions should be filed so as to enable the Court to consider whether there is a substantial question of law. Wherever the Court is inclined to entertain the appeal, apart from normal procedure for service as per rules, advance notice shall be given to the counsel who had appeared in the first appellate Court. The notice should require the respondents to file their written submissions within a period of eight weeks from service of notice. Efforts should be made to complete the hearing of the second appeals within a period of six months.

VII. CIVIL REVISION

A revision petition may be filed under Section 115 of the Code or under any special statute. In some High Courts, petitions under Article 227 of the Constitution of India are registered as civil revision petitions. The practice direction in regard to LPAs and first appeals to the High Courts, should mutatis mutandis apply in respect of revision petitions.

VIII. CRIMINAL APPEALS

Criminal appeals should be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment cases, rape, sexual offences, dowry death cases should be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy, food adulteration cases, offences of sensitive nature should be kept in Track III. Offences which are tried by Special Courts such

as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in Track IV. Track V-all other offences.

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

Wherever an appeal is filed by a person in jail, and also when appeals are filed by the State, the complete paper-books including the evidence, should be filed by the State within such period as may be fixed by the Court.

In appeals against acquittals, steps for appointment of amicus curie or State legal aid counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the Registry/State Legal Services Committee immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel, and within two weeks thereafter counsel shall be appointed and shall be furnished all the papers.

IX. NOTE

Wherever there is any inconsistency between these Rules and the provisions of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 or the High Court Act, or any other statute, the provisions of such Codes and statutes, shall prevail.”

<P11M>

APPENDIX-XVII

JHARKHAND HIGH COURT CASE FLOW MANAGEMENT IN THE SUBORDINATE COURTS RULES, 2006

JHARKHAND H.C. CASE FLOW.....SUBORDINATE COURTS RULES, 2006

In exercise of the power conferred by Part X of the Code of Civil Procedure, 1908, (5 of 1908), the High Court of Jharkhand hereby makes the following Rules with regard to Case Flow Management in the Subordinate Courts of the State.

I. DIVISION OF CIVIL SUITS AND APPEALS INTO TRACKS

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

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

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

3. The Judge referred to in clause (2) above, may shift a case from one track to another, depending upon the complexity and other circumstances of the case.

4. Where computerization is available, the monthly data will be fed into the computer in such a manner that the Judge referred to in clause (2) above, will be able to ascertain the position and the stage of every case

in every track from the computer screen. Over a period, all cases pending in his Court will be covered. Where computerization is not available, the monitoring must be done manually.

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

II. ORIGINAL SUIT.

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

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

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

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

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

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

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

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

(b) If the Court passes an ad interim ex parte order in an interlocutory application, and the reply by the defendants is filed, and if, thereafter, the plaintiff fails to file the rejoinder (if any) without good reason for the delay, the Court has to consider whether the stay or interim order passed by the Court should be vacated and shall list the case with that purpose. This is meant to prevent parties taking adjournment with a view to have undue benefit of the ad interim orders. The plaintiff may, if he so chooses, also waive his right to file a rejoinder. A communication of option by the plaintiff not to file a rejoinder, made to the Registry will be deemed to be the completion of pleadings in the interlocutory application.

5. Referred to alternative dispute resolution.—(In the hearing before the Court, after completion of pleadings, time- limit for discovery and inspection, and admission and denials, of documents shall be fixed, preferably restricted to 4 weeks each).

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

6. Procedure of the failure of alternative dispute resolution.—On the filing of report by the mediator under the Mediation Rules that efforts at mediation have failed, or a report by the conciliator under the provisions of the Arbitration and Conciliation Act, 1996, or a report of no settlement in the Lok Adalat under the provisions of the Legal Services Authorities Act, 1987 the suit shall be listed before the Registry within a period of 14 days. At the said hearing before the Registry, all the parties shall submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

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

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

7. Referred to the Commissioner for recording of evidence.—(a) The High Court shall conduct an examination on the subjects of the Code of Civil Procedure, 1908 and the Evidence Act, 1872. Only those advocates who have passed an examination conducted by the High Court on the subjects of Code of Civil Procedure, 1908 and the Evidence Act, 1872, shall be appointed as Commissioners for recording evidence. They shall be ranked according to the marks secured by them.

(b) It is not necessary that in every case the Court should appoint a Commissioner for recording evidence. Only if the recording of evidence is likely to take a long time, or there are any other special grounds,

should the Court consider appointing a Commissioner for recording the evidence. The Court should direct that the matter be listed for arguments fifteen days after the Commissioner files his report with the evidence.

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

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

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

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

10. Adjournments.—The amendments to the Code have restricted the number of adjournments to three in the course of hearing of the suit, on reasonable cause being shown. When a suit is listed before a Court and any party seeks adjournment, the Court shall have to verify whether the party is seeking adjournment due to circumstances beyond the control of the party, as required by clause (b) of the proviso to Rule 2(sic 1) Order XVII. The Court shall impose costs as specified in Rule 2(sic 1) Order XVII.

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

III. FIRST APPEALS TO SUBORDINATE COURT

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

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

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

3. Fixation of time-limits in interlocutory matters.—Whenever notice is issued by the appellate Court in interlocutory matters, the notice should indicate the date by which the reply should be filed. The rejoinder, if

any, should be filed within four weeks of receipt of the reply. If there are more parties than one who are respondents, each one of the respondents should comply with this requirement within the time-limit and the rejoinder may be filed within four weeks from the receipt of the last reply.

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

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

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

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

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

7. Costs.—Awarding of costs must be treated generally as mandatory inasmuch as it is the liberal attitude if the Courts in not awarding costs that has led to frivolous points being raised in appeals or frivolous appeals being filed in the Courts. Costs should invariably follow the event and reasons must be assigned by the appellate Court for not awarding costs. If any of the parties have unreasonably protracted the proceedings, the Judge shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

IV. APPLICATION/PETITION UNDER SPECIAL ACTS

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

The practice directions in regard to original suits should mutatis mutandis apply in respect of such applications/petitions.

V. CRIMINAL TRIALS AND CRIMINAL APPEALS TO SUBORDINATE COURTS

(a) Criminal trials.—

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

The endeavour should be to complete Track I cases within a period of nine months, Track II and Track

III cases within twelve months and Track IV within fifteen months.

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

(b) Criminal appeals.—

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

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

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

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

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

VII. NOTE

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

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APPENDIX-XVIII

CIVIL PROCEDURE ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION RULES, 2006

CIVIL PROCE. ALTERN. DISPUTE RESOL. & MEDIATION RULES, 2006

In exercise of the rule-making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Jharkhand is hereby issuing the following Rules :—

PART I

ALTERNATIVE DISPUTE RESOLUTION RULES

1. Title.—These rules in Part I shall be called the Civil Procedure Alternative Disputes Resolution Rules, 2006.

2. Procedure for directing parties to opt for alternative modes of settlement.—(a) The Court shall after recording admissions and denials at the first hearing of the suit under Rule 1, Order X and where it appears to the Court that there exist elements of settlement, which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89 and parties shall submit to the Court their responses within thirty days of the first hearing.

(b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1-A of Order X in the manner stated hereunder :

Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit.

3. Persons authorised to take decision for the Union of India, State Governments and others.—(1) For the purpose of Rule 2, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group of persons who are authorised to take a final decision as to the mode of alternative dispute resolution in which it proposes to opt in the event of direction by the Court under Section 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate Courts in this behalf as soon as such nomination is received from such Government or authorities.

(2) Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause (1) shall, if it is a plaintiff, file along with the plaint or if it is a defendant, file along with or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorised to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of alternative dispute resolution.

4. Court to give guidance to parties while giving direction to opt. (a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely :

(i) that it will be to the advantage of the parties, so far as time and expense, are concerned, to opt for one or other of these modes of settlement (referred to in Section 89) rather than seek a trial on the dispute arising in the suit;

(ii) that, where there is no relationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of Section 89;

(iii) that, where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clause (b) or (d) of sub-section (1) of Section 89;

Explanation.—Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

(iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to the Lok Adalat or to judicial settlement as envisaged in clause (c) of sub-section (1) of Section 89;

(v) the difference between the different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement is as explained below :

Settlement by ‘arbitration’ means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996.

Settlement by ‘conciliation’ means the process by which a conciliator, who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) insofar as they relate to conciliation, and in particular, in exercise of his powers under Sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

Settlement by ‘mediation’ means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the

provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties' own responsibility for making decisions which affect them.

Settlement in the Lok Adalat means settlement by the Lok Adalat as contemplated by the Legal Services Authorities Act, 1987.

Judicial settlement means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

5. Procedure for reference by the Court to the different modes of settlement.—(a) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within thirty days of the direction of the Court under clause (b) of Rule 2 and the Court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act.

(b) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat or where one of the parties applies for reference to the Lok Adalat, the procedure envisaged under the Legal Services Authorities Act, 1987 and in particular by Section 20 of that Act, shall apply.

(c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under clause (b) of Rule 2 and then the Court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to the Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act.

(d) Where none of the parties are willing to agree to opt or agree to refer the dispute to arbitration or the Lok Adalat, or to judicial settlement within thirty days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

(e)(i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act.

(ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application, refer the matter to mediation and then the Mediation Rules, 2003 in Part II shall apply.

(f) Where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within thirty days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of thirty days issue notice to the other parties to respond to the application, and

(i) In case all the parties agree for conciliation, the Court shall refer the matter to conciliation and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.

(ii) In case all the parties agree for mediation, the Court shall refer the matter to mediation in accordance

with the Civil Procedure Mediation Rules, 2003 in Part II shall apply.

(iii) In case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure Mediation Rules, 2003, shall apply.

(g)(i) Where none of the parties apply for reference either to arbitration, or the Lok Adalat, or judicial settlement, or for conciliation or mediation, within thirty days of the direction under clause (b) of Rule 2, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

(ii) After hearing the parties or their representatives on the day so fixed the Court shall, if there exist elements of a settlement which may be acceptable to the parties and there is a relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall apply and in case the dispute is referred to mediation, the provisions of the Civil Procedure Mediation Rules, 2003, shall apply.

(h)(i) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for anyone of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

(ii) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

6. Referral to the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation.— (1) Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court with a direction to the parties to appear before the Court on a specific date.

(2) Upon the reference of the matter back to the Court under sub- rule (1) or under sub-section (5) of Section 20 of the Legal Services Authorities Act, 1987, the Court shall proceed with the suit in accordance with law.

7. Training in alternative methods of resolution of disputes, and preparation of manual.—(a) The High Court shall take steps to have training courses conducted in places where the High Court and the District Courts or Courts of equal status are located, by requesting bodies recognized by the High Court or the Universities imparting legal education or retired faculty members or other persons who, according to the High Court are well versed in the techniques of alternative methods of resolution of disputes, to conduct training courses for lawyers and judicial officers.

(b)(i) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, other members of the Bar specially qualified in the techniques of alternative dispute resolution, for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, or authority or person in the case of judicial settlement or conciliators or mediators.

(ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which anyone of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of the above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

(c) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.

(d) Persons who have experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanelment for the purposes of conciliation or mediation.

8. Applicability to other proceedings.—The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act, 1984 (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act (66 of 1984).

PART II

CIVIL PROCEDURE MEDIATION RULES

1. Title.—These Rules in Part II shall be called the Civil Procedure Mediation Rules, 2003.

2. Appointment of mediator.—(a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

(b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

(c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be from the panel of mediators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

3. Panel of mediators.—(a) The High Court shall, for the purpose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its notice board, within thirty days of the coming into force of these Rules, with a copy to the Bar Association attached to the original side of the High Court.

(b)(i) The Courts of the Principal District and Sessions Judge in each district or the Courts of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective notice boards.

(ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the Courts referred to in sub-clause (i) and to the Bar Associations attached to each of the Courts.

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel of names shall contain a detailed annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule 3.—The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely :

(a)(i) Retired Judges of the Supreme Court of India;

(ii) Retired Judges of the High Court;

(iii) Retired District and Sessions Judges or Retired Judges of the City Civil Court or Courts of equivalent status :

(b) Legal practitioners with at least fifteen years' standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status.

(c) Experts or other professionals with at least fifteen years' standing; or retired senior bureaucrats or retired senior executives.

(d) Institutions which are themselves experts in mediation and have been recognised as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

5. Disqualifications of persons.—The following persons shall be deemed to be disqualified for being empanelled as mediators :

(i) any person who has been adjudged as insolvent or is declared of unsound mind, or

(ii) any person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending; or

(iii) any person who has been convicted by a Criminal Court for any offence involving moral turpitude,

(iv) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment,

(v) any person who is interested or connected with the subject- matter of dispute or is related to anyone of the parties or to those who represent them, unless such objection is waived by all the parties in writing,

(vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings,

(vii) such other categories of persons as may be notified by the High Court.

6. Venue for conducting mediation.—The mediator shall conduct the mediation at one or other of the following places :

(i) Venue of the Lok Adalat or permanent Lok Adalat.

(ii) Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation.

(iii) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or State Bar Council, as the case may be.

(iv) Any other place as may be agreed upon by the parties subject to the approval of the Court.

7. Preference.—The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

8. Duty of mediator to disclose certain facts.—(a) When a person is approached, in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

9. Cancellation of appointment.—Upon information furnished by the mediator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the

appointment by a reasoned order and replace him by another mediator.

10. Removal or deletion from panel.—A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if :

(i) he resigns or withdraws his name from the panel for any reason;

(ii) he is declared insolvent or is declared of unsound mind;

(iii) he is a person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending;

(iv) he is a person who has been convicted by a Criminal Court for any offence involving moral turpitude;

(v) he is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;

(vi) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

(vii) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel;

Provided that, before removing or deleting his name, under clauses (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

11. Procedure of mediation.—(a) The parties agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(b) Where the parties do not agree on any particular to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :

(i) he shall fix, in consultation with the parties, a time- schedule, the dates and the time of each mediation session, where all parties have to be present;

(ii) he shall hold the mediation conference in accordance with the provisions of Rule 6;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;

(v) each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved :

Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such officer of the Court and on such date or time as the Court may fix.

(vi) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

12. Mediator not bound by the Evidence Act, 1872 or the Code of Civil Procedure, 1908.—The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by the principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

13. Non-attendance of parties at sessions or meetings on due dates.—(a) The parties shall be present personally or may be represented by their counsel or power-of-attorney holders at the meetings or sessions

notified by the mediator.

(b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs.

(c) The parties not resident in India, may be represented by their counsel or power-of-attorney holders at the sessions or meetings.

14. Administrative assistance.—In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

15. Offer of settlement by parties.—(a) Any party to the suit may, ‘without prejudice’, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(b) Any party to the suit may make a, ‘with prejudice’ offer, to the other party at any stage of the proceedings, with notice to the mediator.

16. Role of mediator.—The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasising that it is the responsibility of the parties to take decisions which affect them; he shall not impose any terms of settlement on the parties.

17. Parties alone responsible for taking decision.—The parties must understand, that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

18. Time-limit for completion of mediation.—On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

19. Parties to act in goodfaith.—While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

20. Confidentiality, disclosure and inadmissibility of information.—(1) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.

(2) When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.

(3) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.

(4) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to :

(a) views expressed by a party in the course of the mediation proceedings;

(b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;

- (c) proposals made or views expressed by the mediator;
- (d) admission made by a party in the course of mediation proceedings;
- (e) the fact that a party had or had not indicated willingness to accept a proposal;
- (5) There shall be no stenographic or audio or video recording of the mediation proceedings.

21. Privacy.—Mediation sessions and meetings are private; only the parties or their counsel or power-of-attorney holders concerned can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

22. Immunity.—No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action, nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

23. Communication between mediator and the Court.—(a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power-of-attorney.

(c) Communication between the mediator and the Court shall be limited to communication by the mediator :

- (i) with the Court about the failure of the party to attend;
- (ii) with the Court with the consent of the parties;
- (iii) regarding his assessment that the case is not suited for settlement through mediation;
- (iv) that the parties have settled the dispute or disputes.

24. Settlement agreement.—(1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power-of-attorney holders. If any counsel have represented the parties, they shall attest the signature of their respective clients.

(2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

(3) Where no agreement is arrived at between the parties, before the time-limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

25. Court to fix a date for recording settlement and passing decree.— (1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

(2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and

(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straight away in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues, which are not settled.

(ii) If the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

26. Fee of mediator and costs.—(1) At the time of referring the disputes to, mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

(2) As far as possible a consolidated sum may be fixed rather than for each session or meeting.

(3) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the two sets of parties.

(4) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.

(5) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(6) The mediator may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clauses (1), (3) and (4). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.

(7) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the parties concerned to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

(8) Where a party is entitled to legal aid under Section 12 of the Legal Services Authorities Act, 1987, the amount of fee payable to the mediator and costs shall be paid by the Legal Services Authority concerned under that Act.

27. Ethics to be followed by the mediator.—The mediator shall :

- (1) follow and observe these Rules strictly and with due diligence;
- (2) not carry on any activity, or conduct which could reasonably be considered as conduct unbecoming of a mediator;
- (3) uphold the integrity and fairness of the mediation process;
- (4) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- (7) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;
- (9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (10) recognise that mediation is based on the principles of self- determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- (11) maintain the reasonable expectations of the parties as to confidentiality;
- (12) refrain from promises or guarantees of results.

28. Transitory provisions.—Until a panel of arbitrators is prepared by the High Court and the District Court, the Courts referred to in Rule 3, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

Dated 10th May, 2001.—In exercise of power vested in me under sub-rule (2) of Rule 1 of the High Court of Jharkhand Rules, 2001, I hereby notify 6th June, 2001, as the date on which the aforesaid Rules, except Rules 6, 7 and 8, shall come into force.

Chief Justice

Jharkhand High Court, Ranchi

No. 107-A, dated the 10th August, 2001, published in Jharkhand Gazette, (Extraordinary) No. 180, dated August 16, 2001—In exercise of the powers conferred by Section 29 of the Bihar Reorganisation Act, 2000 (ACT XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby put Rules No. 213 to 227 of High Court of Jharkhand Rules, 20001 relating to the provision regarding Advocates-on-record in abeyance and suspending their operations for the time being.

Sd/- Illegible,

Chief Justice

Jharkhand High Court, Ranchi

No. 131A, dated 5th September, 2001, published in Jharkhand Gazette, Extraordinary, No. 210, dated 6th September, 2001.—In exercise of the powers conferred by Section 29 of the Bihar Reorganisation Act, 2000 (Act XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby put Rule 209 of High Court of Jharkhand Rules, 2001 in abeyance and suspending its operation for the time being.

Ranchi

Chief Justice

Dated 5th September, 2001

Jharkhand High Court, Ranchi

HIGH COURT OF JHARKHAND (FIRST AMENDMENT) RULES, 2001

In exercise of the powers conferred by Section 29 of the Bihar Reorganisation Act, 2000 (Act XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby makes the following amendment in the Rules namely :

1. Short title and Commencement.—(1) This may be called as High Court of Jharkhand (First Amendment) Rules, 2001.

(2) It shall come into force with retrospective effect from 6th June, 2001.

2. Amendment in Rule 318 (i) of High Court of Jharkhand Rules, 2001.—(1) The digit '1974' after the word "Rules" in Rule 318(i) of High Court of Jharkhand Rules, 2001, is substituted by digit "2001".

Ranchi

Dated 13th July, 2001

Chief Justice

Jharkhand High Court, Ranchi

Noti. No. 02, Acctts., dated 19th February, 2003, published in Jharkhand Gazette Extraordinary No. 75 dated February 19, 2003.—Whereas vide Notification dated the 10th May, 2001 issued under my orders in exercise of the powers vesting in me under sub-rule (2) of Rule 1 of High Court of Jharkhand Rules, 2001, the said Rules had been enforced with effect from 6th June, 2001;

Whereas in the aforesaid Notification, the enforcement of Rules 6, 7 and 8 had not been notified;

Whereas, now I am of the opinion that the aforesaid Rules 6, 7 and 8 contained in Chapter II of the Rules also require to be enforced;

Now, therefore, in exercise of the aforesaid power vesting in me in terms of sub-rule (2) of Rule 1, I, hereby notify that Rules 6, 7 and 8 contained in Chapter II of the Rules shall also be enforced and the date of enforcement of these Rules shall be 20th February, 2003.

By order of the High Court.

Vinod Kumar Gupta

CHIEF JUSTICE

19.2.2003

Notifn. dated 5th November, 2003.—In partial modification of Rule 20 of Chapter III in Part-I of the High Court of Jharkhand Rules, 2001, the offices of the Court shall, except during vacation and second Saturdays, be open on Saturdays from 10.00 a.m. to 5.00 p.m., but no work, unless of urgent nature, shall be admitted after 1.30 p.m.

This amendment shall come into force with effect from 1st December, 2003.

By order of the Court.

THE JHARKHAND HIGH COURT OFFICERS AND THE MEMBERS OF STAFF (RECRUITMENT, CONDITIONS OF SERVICE, CONDUCT AND APPEAL) [SECOND AMENDMENT] RULES, 2005**Published in the Jharkhand Gazette Extraordinary No. 32, dated 18th January, .2006.

A Rule further to amend the Jharkhand High Court Officers and the Members of Staff (Recruitment, Conditions of Service, Conduct and Appeal) Rules, 2003.

No. 180 dated 17th January, 2006.—In exercise of the powers conferred by clause (2) of Article 229 of the Constitution of India and all other enabling provisions in this behalf and in supersession of all Rules, Regulations, Notifications and Orders etc. on the subject, the acting Chief Justice of the High Court of Jharkhand, hereby makes the following amendment in the Rules, namely :—

PART I

PRELIMINARY

1. Short title and commencement.—(i) These Rules may be called the **The Jharkhand High Court Officers and the Members of Staff (Recruitment, Conditions of Service, Conduct and Appeal) {Second Amendment} Rules, 2005.**

(ii) It shall come into force with effect from the 1st day of November, 2005.

PART II

AMENDMENT OF SCHEDULE

2. Substitution of new Schedule for existing Schedule.—For existing Schedule of the Jharkhand High Court Officers and the Member of Staff (Recruitment, Conditions of Service, Conduct and Appeal) Rules, 2003 (hereinafter to be referred as the ‘Principal Rule’), as amended from time to time, the following Schedule shall be substituted, namely :—

(Note : Amendments of Schedules A to D have been incorporated at the appropriate places).

HIGH COURT OF JHARKHAND (SECOND AMENDMENT)

RULES, 2005Published in the Jharkhand Gazette, Extraordinary, No. 45, dated 28th January, 2006.**

A rule further to amend the Jharkhand High Court Rules, 2001.

No. 82/R&S—In exercise of the powers conferred by Section 29 of the Bihar Recognition Act, 2000 (Act XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby makes the following amendment in the Rules namely :

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This may be called as **High Court of Jharkhand (Second Amendment) Rules, 2005.**

(2) It shall come into force from the date of publication in the Official Gazette.

CHAPTER II

AMENDMENT OF RULES

(Note : Amendments of Rule 2 to 36 have been incorporated at the appropriate places).

HIGH COURT OF JHARKHAND (THIRD AMENDMENT)

RULES, 2006

A Rule further to amend the Jharkhand High Court Rules, 2001

In exercise of the powers conferred by Section 29 of the Bihar Reorganisation Act, 2000 (Act XXX of 2000) and all other powers enabling it in this behalf, the High Court of Jharkhand hereby makes the following amendment in the Rules namely :

CHAPTER I

PRELIMINARY

1. Short title and Commencement.—(1) This may be called as High Court of Jharkhand (Third Amendment) Rules, 2006.

(2) It shall come into force from the date of publication in the Official Gazette.

CHAPTER II

AMENDMENT OF RULES

(Note : Amendment of Rule 2 has been incorporated at the appropriate place).

LANDMARKS JUDGMENT

JHARKHAND HIGH COURT2006 (1) J C R 1 : 2006 (1) East Cr C 1 (Jhr)(FB).**

[FULL BENCH]

S.J. MUKHOPADHAYA, ACJ, M.Y. EQBAL AND N.N. TIWARI, JJ.

L.P.A. No. 312 of 2004 with L.P.A. No. 393 of 2004,

decided on December 2, 2005

Swapan Kumar Bandopadhyay

Appellant

(in LPA 312/04)

Versus

SAIL through its unit Bokaro Steel City & Ors.

Respondents

(in LPA 312/04)

With

Doman Mahto

Appellant

(in LPA 393/04)

Versus

State of Jharkhand & Anr.

Respondents

(in LPA 393/04)

Jharkhand High Court Rules, 2001, Part VII—Letters Patent Appeal, Clause 10—Maintainability of against an order passed by a single Judge under exercise of supervisory writ jurisdiction under Article 227 of the Constitution of India—<BI>Held—If single Judge exercises his jurisdiction only under Article 227 of the Constitution, Letters Patent Appeal under Clause 10 would not be maintainable against such judgment before a Division Bench of High Court.

[Para 12]

Case-laws.—AIR 1986 SC 1272; 1993 Supp (1) SCC 11; (1993) Suppl (1) SCC 9; 2003 (4) JCR 174 (SC) : (2003) 6 SCC 675—**Relied on**; 2003 (4) JCR 22 (SC) : (2003) 6 SCC 659; (2003) 10 SCC 361—**Referred.**

Counsel :

Siddharth Ranjan, for the appellant (in LPA 312/2004).

Ananda Sen, for the respondent 1 (in LPA 312/2004).

Indrajit Sinha, Kaushik Sarkhel, Anjal Raj and P.A.S. Pati, for the appellant (in LPA 393/2004).

G.P. No. 1 for the State (in LPA 393/2004)

Jai Prakash, Niranjan Singh, Om Prakash Singh & Ritesh Kumar Bobby, for the 2nd respondent (in LPA 393/2004).

JUDGMENT

S.J. Mukhopadhya, ACJ.—The only question referred to and sought to be answered by this Bench in these appeals is :

Whether an appeal under Clause 10 of Letters Patent (commonly known as Letters Patent Appeal—LPA) is maintainable against an order passed by a single Judge under Article 227 of the Constitution of India?

2. The brief facts of the case are as follows :

Appellant Swapan Kumar Bandopadhyay of L.P.A. No. 312 of 2004 was an employee of M/s. Bharat Refractories Limited (hereinafter referred to as M/s. B.R.L.). He was allotted a Flat No. 6013 in Sector IV-F of Bokaro Steel City. Even after his dismissal from service, he did not vacate the official quarter. On an application jointly preferred by 'Bokaro Steel Plant' of Steel Authority of India Ltd. (hereinafter referred to as the SAIL) and M/s. B.R.L., a proceeding under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 1971 Act) was initiated against the appellant, registered as A/E Case No. 21/97 before the Estate Officer, Bokaro Steel Plant. In the said case, the appellant filed an objection challenging the jurisdiction of the Estate Officer, Bokaro Steel Plant and pleaded that the house was allotted to him by M/s. B.R.L. and as such the said proceeding was not maintainable before the Estate Officer, Bokaro Steel Plant. He further pleaded that there was a separate Estate Officer appointed under Section 3 of the 1971 Act for M/s. B.R.L. His plea was accepted and the case was dismissed, holding the same as not maintainable, by order dated 14th August, 1999 passed by the Estate Officer, Bokaro Steel Plant. Against the said order, Misc. Appeal being No. 53/99 was filed by M/s. B.R.L. in the Court of District Judge, Bokrao. After giving notice and hearing the parties, the learned 1st Additional District Judge, Bokaro, vide judgment dated 19th January, 2002 allowed the appeal and directed the appellant to vacate the Quarter. For about two years thereafter, the appellant did not choose to move before any Court of law against the said judgment dated 19th January, 2002. After more than two years, a petition under Article 227 of the Constitution of India was preferred by appellant against the judgment dated 19th January, 2002, registered as W.P. (C) No. 1341 of 2004, which was dismissed by the learned single Judge by impugned order dated 25th March, 2004 both on merit and on the ground of delay.

3. So far as appellant Doman Mahto of L.P.A. No. 393 of 2004 is concerned, he was married with the 2nd respondent-Meena Devi on 3rd May, 2001. Later on, because of disputes and differences between them, they started living separately. A Title (Matrimonial) Suit No. 289 of 2002 was filed by the appellant praying for a decree of divorce. The 2nd respondent-Meena Devi (wife) appeared in the said case and filed an application under Section 24 of the Hindu Marriage Act, 1955, claiming maintenance pendente lite. The learned Principal Judge, Family Court, Dhanbad on hearing the parties, vide impugned order dated 9th July, 2003 allowed the petition and directed the appellant (husband to pay monthly maintenance of Rs. 1500/- to his wife-2nd respondent, pendente lite from the date of filing the petition i.e. 9th May, 2003 as also the expenses of the proceedings.

4. The appellant Doman Mahato challenged the aforesaid order before this Court under Article 226 of

the Constitution of India in W.P. (C) No. 3612 of 2003. Initially, the learned single Judge tried to get the dispute settled by negotiation as the wife agreed to lead conjugal life with her husband, but since the appellant (husband) refused to keep his wife, the case was heard on merit. By impugned order dated 30th April, 2004, the learned single Judge in exercise of power conferred under Article 227 of the Constitution of India, declined to interfere with the order of maintenance pendente lite. Against the said order, L.P.A. No. 393 of 2004 has been preferred by the appellant.

5. Mr. Indrajit Sinha, learned counsel for the appellant-Doman Mahato, referred to Supreme Court decision in the case of **Surya Dev Rai v. Ram Chander Rai**, reported in 2003 (4) JCR 174 (SC) : (2003) 6 SCC 675, wherein by majority decision, the Supreme Court held that after the amendment of CPC a litigant may pursue his remedy under Article 226 and/or 227 of the Constitution of India.

Reliance was also placed on Supreme Court decision in the case of **Shiv Shakti Coop. Housing Society v. Swaraj Developers**, reported in 2003 (4) JCR 22 (SC) : (2003) 6 SCC 659, wherein the Supreme Court held that remedy under Article 227 was available to a party aggrieved by an order of a Civil Court.

He also placed reliance on Supreme Court decision in the case of **Subal Paul**, reported in (2003) 10 SCC 361, wherein the Supreme Court held that letters patent appeal against the order passed by the learned single Judge of the High Court in an appeal under Section 299 of the Indian Succession Act is maintainable.

6. As noticed above, the appellant 'Swapan Kumar Bandopadhyay' of L.P.A. No. 312 of 2004 preferred a petition under Article 227 of the Constitution of India against the appellate order dated 19th January, 2002 and the appellant, 'Doman Mahato' of L.P.A. No. 393 of 2004 filed a petition under Article 226 of the Constitution of India against the order dated 9th July, 2002 passed by the learned Principal Judge, Family Court, Dhanbad under Section 24 of the Hindu Marriage Act, 1955. Learned single Judge, however, exercising supervisory power under Article 227 of the Constitution of India, declined to interfere with the order.

7. It is a settled law that where an order is without jurisdiction or involves non-exercise of jurisdiction or against the principles of natural justice or there is a grave dereliction of duty or flagrant violation of the law as distinguished from a merely erroneous decision of fact or law or flatten irregularity in procedure or an error of law apparent on the face of the record or that the finding is perverse, being founded on no material whatever, High Court can exercise its jurisdiction under Article 227 of the Constitution of India. However, the power under Article 227 cannot be exercised to correct an error of law, not being an error apparent on the face of record.

8. A similar issue fell for consideration before the Supreme Court in Special Leave to Appeal (Civil) No. 25094 of 1994 as was preferred by one 'Dr. Ranjit Singh'. The Supreme Court vide its order dated 20th November, 1995 while interpreting the provisions contained in sub-section (4) of Section 19 of the Family Courts Act, which expressly bars the appeal or revision, except as provided by sub-section (1) held, as follows :

“It is true that sub-section (4) of Section 10 of the Family Courts Act expressly bars an appeal or revision except as provided by sub-section (1). Sub-section (1) provides an appeal only against a final order passed by the Family Court. In this sense, the revision filed under Section 115 of the CPC was not maintainable. In law, but in extraordinary cases, the High Court may not be precluded from exercising its powers under Article 227 of the Constitution and rectify any grave injustice caused. Be that as it may, having regard to the facts and circumstances of the case we are not inclined to interfere with the matter also because the High Court has merely remanded the matter and it is upon the petitioner-husband to bring all the relevant facts to the notice of the trial Court at the time of hearing of the petition under Section 24 of the Hindu Marriage Act.

The Special Leave Petition is dismissed with the aforesaid observations.”

9. In the instant case of 'Doman Mahato' the order dated 9th July, 2003 passed in Title (Matrimonial) Suit No. 289 of 2002 by the Principle Judge. Family Court, Dhanbad having been challenged, learned single

Judge instead of exercising extraordinary jurisdiction under Article 226, exercised power under Article 227, as evident from the impugned order dated 30th April, 2004 passed in W.P. (C) No. 3612 of 2003. Therefore, it is clear that the impugned order in that case was passed under Article 227 of the Constitution of India.

10. The question : Whether a Letters Patent Appeal against an order passed under Article 226 and/or under Article 227 is maintainable or not and whether such right can be curtailed without any express provision under the statute, fell for consideration before the Supreme Court, from time to time.

In the case of “**Umaji Keshao Meshram v. Smt. Radhikabai**”, reported in, AIR 1986 SC 1272 : (1986) Suppl SCC 401, the Supreme Court held, as follows :

“.....no appeal under Clause 15 of the Letters Patent lies to the High Court against the order of a single Judge of the High Court exercising jurisdiction under Article 227 of the Constitution, no less and no more.”

“.....the reference to Section 107 of the Government of India Act, 1915 in Clause 15 of the Letters Patent must necessarily be read as a reference to Article 227 of the Constitution. So read an appeal under Clause 15 is clearly not maintainable against an order made in exercise of the powers under Article 227.....”

“.....In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.....”

In the case of **Subhilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha**”, reported in (1993) Suppl (1) SCC 11, the Supreme Court endorsing the aforesaid view, held as follows :

“The Full Bench of the Bombay High Court wrongly understood the above **Umaji Kesho Mesram** case. In **Umaji** case it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles. In fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with Clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned single Judge would now be heard and decided on merits. In view of the fact that it is an old matter we request the High Court to decide the Letters Patent Appeal within six months. It is further directed that till the final disposal of the Letters Patent Appeal the operation of the order of the single Judge shall remain stayed. The appeals are allowed in part with no order as to costs.”

Similar was the view of the Supreme Court in the case of **Ratnagiri District Central Cooperative Bank Ltd. v. Dinkar Kashinath Walve** reported in (1993) Suppl (1) SCC 9, wherein the Court held as follows :

“It is clear that so far as the present case was concerned the relief granted by the learned single Judge clearly indicate that he was exercising jurisdiction under Article 226 and not under Article 227 of the Constitution and in this view of the matter and in the light of what has been laid down by this Hon’ble Court in the judgment

referred to above a Letters Patent Appeal under Clause 15 would be maintainable before the Division Bench of the High Court. The appeal is, therefore, allowed and the judgment passed by the learned Division Bench is set aside. The matter is sent back to the High Court and it is expected that the Division Bench will hear the appeal on merits and dispose it of in accordance with law expeditiously preferably within four months from today.”

In the case of **Surya Dev Rai v. Ram Chander Rai** reported in 2003 (4) JCR 174 (SC) : (2003) 6 SCC 675, the Supreme Court held as follows :

“Such like matters frequently arise before the High Court. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder :

(1) Amendment by Act 46 of 1999 with effect from 1.7.2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a Subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none; or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. When a Subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (1) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long- drawn process of reasoning. Where two inferences are reasonably possible and the Subordinate Court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a Subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappraisal or evaluation of evidence or correct errors in drawing inferences or correct of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling

for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercise by the High Court in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the Subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the Subordinate Court as to the manner in which act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the Subordinate Court as the Court should have made in the facts and circumstances of the case.”

11. So far as Clause 10 of the Letters Patent Appeal of the High Court of Patna, as adopted by the Jharkhand High Court is concerned, it is almost same and similar to Clause 15 of the Letters Patent Appeal of Bombay High Court. Therefore, the principles as laid down by the Supreme Court and referred to above, is also applicable in the present cases.

12. From the decisions of the Supreme Court aforementioned, it is clear that a if a single Judge exercises jurisdiction under Article 226 as well as both under Articles 226 and 227 of the Constitution of India, against such judgment, Letters Patent Appeal under Clause 10 shall lie before this Court. On the other hand, if learned single Judge exercises his jurisdiction only under Article 227 of the Constitution Letters Patent Appeal under Clause 10 would not be maintainable against such judgment before a Division Bench of this Court.

13. From the writ petition W.P.C. (C) No. 1341 of 2004 preferred by appellant “Swapan Kumar Bandopadhyay” (L.P.A. 312/2004), it is evident that the said application was preferred only under Article 227 of the Constitution of India, whereas the appellant “Doman Mahato” (L.P.A. 393/2004) had filed writ petition, W.P. (C) No. 3612 of 2003 under Article 226 of Constitution, but the learned single Judge passed the impugned order in exercise of his jurisdiction under Article 227 of Constitution of India.

14. In the circumstances, both the appeals filed under Clause 10 of the Letters Patent against the order(s) passed under Article 227 of Constitution are not maintainable. The question as raised in these appeals is, accordingly, answered in negative and against the appellants. Both the appeals are, accordingly, dismissed. However, in the facts and circumstances, there shall be no order, as to costs.

M.Y. Eqbal, J.—I agree.

N.N. Tiwari, J.—I agree.

LPAs dismissed.

LATEST CASE LAWS

—Clause 10—Constitution of India, Article 225—Letters Patent Appeal—Maintainability of—Challenged on the ground that order passed by single Judge in terms of Section 17-B of Industrial Disputes Act, 1947 is not ‘judgment’—Division Bench holding Letters Patent Appeal not maintainable—Hence this appeal—Held, if order is a final determination affecting vital and valuable rights and obligations of the parties concerned, falls within the definition of “judgment” for the purpose of Letters Patent—Since order under Section 17-B of I.D. Act, 1947 confers valuable rights on the workmen and imposes an onerous obligation on the employee, hence such order is judgment—Letters Patent Appeal maintainable.—To determine the question whether an interlocutory order passed by one Judge of a High Court falls within the meaning of ‘judgment’ for purposes of Letters Patent the test is : whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case. Section 17-B of the ID Act confers valuable rights on the workmen and correspondingly imposes an onerous obligations on the employer. The order passed on an application under Section 17-B of the ID Act is judgment within the meaning of Clause 10 of the Letters Patent of Patna and is, therefore, appealable. [Employees in relation to CMPDI Ltd. v. Union of India and another, 2001 (1) Jhr CR 310 (SC)].

—Clause 10, Appendix E—Revisional jurisdiction—Order passed therein—Cannot be

challenge in the letters patent jurisdiction.—Perusal of clause 10, it is apparent that the order/judgment passed in exercise of revisional jurisdiction cannot be challenged in the Letters Patent jurisdiction. It is immaterial whether such order amounts to judgment or not. [Ramswarup Agarwalla v. Banwari Lal Agarwalla, (1999) 3 PLJR 403 : (1999) 2 BBCJ 448 (Pat) (DB) (RB)].

—**Clauses 10 and 18—Maintainability of appeal against order of Single Judge exercising original criminal jurisdiction—Such appeal not maintainable.**—It is true that in the said case, it has also been held that the jurisdiction is undoubtedly special and exclusive, but on that account the nature of the proceeding in which it is exercised is not altered. It is also true that in the said case the Division Bench has held that criminal writ will be maintainable mostly in those cases, in which the order can be challenged in revisional jurisdiction of the High Court or under Section 482 of the Cr PC or preventive detention cases.

Clause 10 of the Letters Patent provides that an appeal shall lie to this Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of the revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of the Judge of this Court or one Judge of any division Court, pursuant to Section 108 of the Government of India Act. In this regard, it is also pertinent to quote Clause 18 of the Letters Patent.

Said Clause 18 clearly bars from maintaining an appeal in the High Court from any sentence or order passed or made by Courts of original criminal jurisdiction which may be constituted by one or more judges of the High Court.

There cannot be any doubt that the impugned order has been passed by the Single Judge while exercising the original criminal jurisdiction vested in him under Article 226 of the Constitution and, as such, appeal against the said order cannot be held to be maintainable. [Damodar Singh v. State of Bihar, 1998 (2) Pat LJR 68].

—**Chapter XXI-C, Rule 3—Letter Patent—Clauses 10 and 18—Constitution of India Article, 226—Government of India Act, 1935, Section 107— Criminal Procedure Code, 1973, Section 147— Writ to quash proceeding under Section 147, Cr PC by SDO—Dismissal by Single Judge—Filing of LPA—Contention—Distraction can not be made in writ court for dealing civil and criminal has no force—Violation of right is necessary—Maintainability of appeal against the order of Single Judge w.e.f. legal—Not maintainable.**—The Supreme Court has held that the character of the proceeding depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed.

The contention of the learned counsel, for the appellants that no distinction can be made in this court dealing with a matter in its writ jurisdiction either civil or criminal has got no substance.

Clause 10 of the Letters Patent, provides that an appeal shall lie to this Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of the revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of this Court or one judge of any division Court, pursuant to Section 108 of the Government of India Act.

There cannot be any doubt that the impugned order has been passed by learned Single Judge while exercising the original criminal jurisdiction vested in him under Article 226 of the Constitution and, as such appeal against the said order cannot be held to be maintainable. [Damodar Singh v. State of Bihar, 1997 (2) BLJ 49 at p. 50].

—**Rules 1 to 3—Transfer of appeal or criminal revision from one Court to another Court— Power of High Court—Control over subordinate court, Superintendence and Administration—Judicial**

hierarchy to get judicial work, Patna High Court Rules sustain likewise power which are plaminery and unfettered under Articles 226 and 227 of the Constitution of India—Appeal dismissed. [Arun Kumar Sinha v. State of Bihar, 1997 BCCR 538 (Pat)].

—**Rule 4—Limitation Act, 1963, Section 5—Abatement of appeal—Delay in filing substitution application.**—It is clear that though the appellants were aware of the fact that substitution petition in respect of heirs of deceased-respondent was dismissed by the lower Appellate Court and though that very order has been impugned in this second appeal, the petitioner under Order XXII, Rule 4 was filed by stating that though in place of respondent, who died during pendency of the appeal in Court below and in his place his heirs were substituted, but decree under challenge was not amended by the lower appellate Court. Under the facts and circumstances, in view of the Court, none of the substantial questions of law formulated arises for any decision. [Lutu Uraon v. Balu Uraon, (1999) 2 BLJR 1411 (Pat)].

—**Rule 10—Jurisdiction—Whether the special jurisdiction of the Court under Letters Patent inhibit the Court—Held—No—It is true that the special jurisdiction of the Court under Letters Patent does not inhibit the Court from doing into questions of fact as well as questions of law, it was equally well-settled that findings of fact may be interfered by the Court only if there were good reasons to do so.** [Barhu Ram v. Butai Ram, (1999) 3 PLJR 52 : (1999) 2 BLJ 818 : (1999) 3 BLJR 1713 (Pat)(DB)].

—**Rule 13 of Chapter II and Rule 24 of Chapter XXI- E—Presentation of election petition—Challenged by the appellant—High Court of Patna seeking dismissal of the election petition, on the ground that the petition presented was beyond the period of limitation—Order of the designated election Judge cannot, under the circumstances, be sustained—The election petition must be proceed to trial on merits.** [Chandra Kishore Jha v. Mahavir Prasad, (1999) 3 All PLR 96 (SC)].

—**Part II, Clause 12, Rule 4(r)—Contempt of Court—Advocate and his clerk are held guilty of contempt of Court as they had presented bail application suppressing facts, the bail which was granted, later cancelled for such reason.** [Ashok Kumar Singh v. Ram Sujan Singh, 1998 BCCR 373 : 1998 (1) All PLR 518 : 1998 (3) BLJ 225].

CHAPTER-XVI

JHARKHAND HIGH COURT CASE FLOW MANAGEMENT IN THE HIGH COURT RULES, 2006

In exercise of power conferred by Article 225 of the Constitution of India and Section 10 of the Code of Civil Procedure, 1908 (5 of 1908) and also Rule 15 of the Jharkhand High Court Rules, 2001, the High Court of Jharkhand hereby makes THE CASE FLOW MANAGEMENT RULES in the High Court.

I. DIVISION OF CASES INTO DIFFERENT TRACKS

1. Writ petitions : The High Court shall, at the stage of admission or issuing notice before admission categorise the writ petitions other than the writ of habeas corpus, into three categories depending on the urgency with which the matter should be dealt with; the fast track, the normal track and the slow track. The petitions in the fast track shall invariably be disposed of within a period not exceeding six months while the petitions in the normal track should not take longer than a year. The petitions in the slow track, subject to the pendency of other cases in the Court, should ordinarily be disposed of within a period of two years.

Where an interim order of stay or injunction is granted in respect of liability to tax or demolition or eviction from public premises, etc. shall be put on the fast track. Similarly, all matters involving tenders would also be put on the fast track. These matters cannot brook delays in disposal.

2. Senior officers of the High Court, nominated for the purpose, shall at intervals of every month, monitor the stage of each case likely to come up for hearing before each Bench (the Division Bench or the

Single Judge) during that month which have been allocated to the different tracks. The details shall be placed before the Chief Justice or the Committee nominated for that purpose as well as the Judge concerned dealing with cases.

3. The Judge or Judges referred to in clause (2) above may shift the case from one track to another, depending upon the complexity, (urgency) and other circumstances of the case.

4. Where computerisation is available, date will be fed into the computer in such a manner that the Court or Judge or Judges, referred to in clause (2) above will be able to ascertain the position and stage of every case in every track from the computer screen.

5. Whenever the roster changes, the Judge concerned who is dealing with final matters shall keep himself informed about the stage of the cases in various tracks listed before him during every week, with a view to see that the cases are taken up early.

6. Other matters : The High Court shall also divide civil appeals and other matters in the High Court into different tracks on the lines indicated in sub-clauses (2) to (5) above and the said clauses shall apply, mutatis mutandis, to the civil appeals filed in the High Court. The High Court shall make a subject-wise division of the appeals/revision application for allocation into different tracks.

(Division of criminal petitions and appeals into different tracks is dealt with separately under the heading 'criminal petitions and appeals')

II. WRIT OF HABEAS CORPUS

Notices in respect of writ of habeas corpus where the person is in custody under orders of a State Government or Central Government shall invariably be issued by the Court at the first listing and shall be made returnable within 48 hours. The State Government or Central Government may file a brief return enclosing the relevant documents to justify the detention. The matter shall be listed after notice on the fourth working day after issuance of notice, and the Court shall consider whether a more detailed return to the writ is necessary, and, if so required, shall give further time of a week and three days' time for filing a rejoinder. A writ of habeas corpus shall invariably be disposed of within a period of fifteen days. It shall have preference over and above the fast track cases.

III. MODE OF ADVANCE SERVICE

The Court Rules will provide for mode of service of notice on the Standing Counsel for the respondents wherever available, against whom, interim orders are sought. Such advance service shall generally relate to Governments or public sector undertakings who have Standing Counsel.

IV. FIRST APPEALS TO THE HIGH COURT

1. Service of notice of appeal.—First appeals being appeals on questions of fact and law, the Courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected under Order XLI, Rule 11 at the admission stage. In view of the amended CPC, a copy of the appeal is required to be filed in the trial Court. It has been clarified by the Supreme Court that the requirement of filing of appeal in the trial Court does not mean that the party cannot file the appeal in the appellate Court (the High Court) immediately for obtaining interim order.

In addition to the process for normal service as per the Code of Civil Procedure, advance notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the trial Court itself so as to enable them to inform the parties to appear if they so choose even at the first hearing stage.

2. Filing of document.—The appellant shall, on the appeal being admitted file all the essential papers within such period as may be fixed by the High Court for the purpose of the High Court understanding the scope of the dispute and for the purpose of passing interlocutory orders.

3. Printing or typing of paper-book.—Printing and preparation of paper-books by the High Court should be done away with. After service of notice is effected, counsel for both sides should agree on the list of documents and evidence to be printed or typed and the same shall be made ready by the parties within the time

to be fixed by the Court. Thereafter the paper-book shall be got ready. It must be assured that the paper-books are ready at least six months in advance before the appeal is taken up for arguments. (Cause-lists must specify if paper-books have been filed or not.)

4. Filing of written submissions and time for oral arguments.—Both the appellants and the respondents shall be required to submit their written submissions with all the relevant pages as per the Court paper-book marked therein within a month of preparation of such paper-books, referred to in para 3 above.

Cause-list may indicate if written submissions have been filed. If not, the Court must direct that they be filed immediately.

After the written submissions are filed (with due service of copy to the other side) the matter should be listed before the Registrar/Master for the parties to indicate the time that will be taken for arguments in the appeal. Alternatively, such matters may be listed before a Judge in chambers for deciding the time duration and thereafter to fix a date of hearing on a clear date when the requisite extent of time will be available.

In the event that the matter is likely to take a day or more, the High Court may consider having a caution list/alternative list to meet eventualities where a case gets adjourned due to unavoidable reasons or does not go on before a Court, and those cases may be listed before a Court where, for one reason or another, the scheduled cases are not taken up for hearing.

5. Court may explore the possibility of settlement.—At the first hearing of a first appeal when both parties appear, the Court shall find out if there is a possibility of a settlement. If the parties are agreeable even at that stage for mediation or conciliation, the High Court could make a reference to mediation or conciliation for the said purpose.

If necessary, the process contemplated by Section 89, CPC may be restored to by the appellate Court so, however, that the hearing of the appeal is not unnecessarily delayed. Whichever is the ADR process adopted, the Court should fix a date for a report on ADR two months from the date of reference.

V. APPEALS TO THE DIVISION BENCH FROM JUDGMENT OF THE SINGLE JUDGE OF THE HIGH COURT [LETTERS PATENT APPEALS (LPA) OR SIMILAR APPEALS UNDER THE HIGH COURTS ACTS]

An appeal to a Division Bench from judgment of a Single Judge may lie in the following cases :

- (1) Appeals from interlocutory orders of the Single Judge in original jurisdiction matters including writs;
- (2) appeals from final judgments of a Single Judge in original jurisdiction;
- (3) other appeals permitted by any law to a Division Bench.

Appeals against interlocutory orders falling under category (1) above should be invariably filed after advance notice to the opposite counsel (who has appeared before the Single Judge) so that both the sides will be represented at the very first hearing of the appeals. If both parties appear at the first hearing, there is no need to serve the opposite side by normal process and at least in some cases, the appeals against interlocutory orders can be disposed of even at the first hearing. If, for any reason, this is not practicable, such appeals against interim orders should be disposed of within a period of a month.

In cases referred to above, necessary documents should be kept ready by the counsel to enable the Court to dispose of the appeal against interlocutory matter at the first hearing itself.

In all appeals against interim orders in the High Court, in writs and civil matters, the Court should endeavour to set down and observe a strict time-limit in regard to oral arguments. In case of original side appeals/LPAs arising out of final orders in a writ petition or arising out of civil suits filed in the High Court, a flexible time-schedule may be followed.

The practice direction in regard to first appeal should mutatis mutandis apply in respect of LPAs/ original side appeals against final judgments of the Single Judge.

Writ/appeals/letters patent appeals arising from orders of the Single Judge in a writ petition should be filed with simultaneous service on the counsel for the opposite party who had appeared before the Single Judge or on service of the opposite party.

Writ appeals against interim orders of the Single Judge should invariably be disposed of early and, at any rate, within a period of thirty days from the first hearing. Before writ appeals against final orders in writ petitions are heard, brief written submissions must be filed by both parties within such time as may be fixed by the Court.

VI. SECOND APPEALS

Even at the stage of admission, the questions of law with a brief synopsis and written submissions on each of the propositions should be filed so as to enable the Court to consider whether there is a substantial question of law. Wherever the Court is inclined to entertain the appeal, apart from normal procedure for service as per rules, advance notice shall be given to the counsel who had appeared in the first appellate Court. The notice should require the respondents to file their written submissions within a period of eight weeks from service of notice. Efforts should be made to complete the hearing of the second appeals within a period of six months.

VII. CIVIL REVISION

A revision petition may be filed under Section 115 of the Code or under any special statute. In some High Courts, petitions under Article 227 of the Constitution of India are registered as civil revision petitions. The practice direction in regard to LPAs and first appeals to the High Courts, should mutatis mutandis apply in respect of revision petitions.

VIII. CRIMINAL APPEALS

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

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

Wherever an appeal is filed by a person in jail, and also when appeals are filed by the State, the complete paper-books including the evidence, should be filed by the State within such period as may be fixed by the Court.

In appeals against acquittals, steps for appointment of amicus curie or State legal aid counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the Registry/State Legal Services Committee immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel, and within two weeks thereafter counsel shall be appointed and shall be furnished all the papers.

IX. NOTE

Wherever there is any inconsistency between these Rules and the provisions of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 or the High Court Act, or any other statute, the provisions of such Codes and statutes, shall prevail.”

JHARKHAND HIGH COURT CASE FLOW MANAGEMENT IN THE SUBORDINATE COURTS RULES, 2006

In exercise of the power conferred by Part X of the Code of Civil Procedure, 1908, (5 of 1908), the High Court of Jharkhand hereby makes the following Rules with regard to Case Flow Management in the Subordinate Courts of the State.

I. DIVISION OF CIVIL SUITS AND APPEALS INTO TRACKS

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

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

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

3. The Judge referred to in clause (2) above, may shift a case from one track to another, depending upon the complexity and other circumstances of the case.

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

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

II. ORIGINAL SUIT.

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

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

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

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

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

(c) If it has not been possible to effect service of summons under Rule 9, Order V, the provisions of

Rule 17, Order V shall apply and the plaintiff shall within 7 days from the date of its inability to serve the summons, to request the Court to permit substituted service. The dates for filing the written statement and replication, if any, shall accordingly stand extended.

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

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

(b) If the Court passes an ad interim ex parte order in an interlocutory application, and the reply by the defendants is filed, and if, thereafter, the plaintiff fails to file the rejoinder (if any) without good reason for the delay, the Court has to consider whether the stay or interim order passed by the Court should be vacated and shall list the case with that purpose. This is meant to prevent parties taking adjournment with a view to have undue benefit of the ad interim orders. The plaintiff may, if he so chooses, also waive his right to file a rejoinder. A communication of option by the plaintiff not to file a rejoinder, made to the Registry will be deemed to be the completion of pleadings in the interlocutory application.

5. Referred to alternative dispute resolution.—(In the hearing before the Court, after completion of pleadings, time- limit for discovery and inspection, and admission and denials, of documents shall be fixed, preferably restricted to 4 weeks each).

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

6. Procedure of the failure of alternative dispute resolution.—On the filing of report by the mediator under the Mediation Rules that efforts at mediation have failed, or a report by the conciliator under the provisions of the Arbitration and Conciliation Act, 1996, or a report of no settlement in the Lok Adalat under the provisions of the Legal Services Authorities Act, 1987 the suit shall be listed before the Registry within a period of 14 days. At the said hearing before the Registry, all the parties shall submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

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

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

7. Referred to the Commissioner for recording of evidence.—(a) The High Court shall conduct an examination on the subjects of the Code of Civil Procedure, 1908 and the Evidence Act, 1872. Only those advocates who have passed an examination conducted by the High Court on the subjects of Code of Civil Procedure, 1908 and the Evidence Act, 1872, shall be appointed as Commissioners for recording evidence. They shall be ranked according to the marks secured by them.

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

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

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

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

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

10. Adjournments.—The amendments to the Code have restricted the number of adjournments to three in the course of hearing of the suit, on reasonable cause being shown. When a suit is listed before a Court and any party seeks adjournment, the Court shall have to verify whether the party is seeking adjournment due to circumstances beyond the control of the party, as required by clause (b) of the proviso to Rule 2(sic 1)

Order XVII. The Court shall impose costs as specified in Rule 2(sic 1) Order XVII.

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

III. FIRST APPEALS TO SUBORDINATE COURT

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

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

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

3. Fixation of time-limits in interlocutory matters.—Whenever notice is issued by the appellate Court in interlocutory matters, the notice should indicate the date by which the reply should be filed. The rejoinder, if any, should be filed within four weeks of receipt of the reply. If there are more parties than one who are respondents, each one of the respondents should comply with this requirement within the time- limit and the rejoinder may be filed within four weeks from the receipt of the last reply.

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

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

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

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

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

7. Costs.—Awarding of costs must be treated generally as mandatory inasmuch as it is the liberal

attitude if the Courts in not awarding costs that has led to frivolous points being raised in appeals or frivolous appeals being filed in the Courts. Costs should invariably follow the event and reasons must be assigned by the appellate Court for not awarding costs. If any of the parties have unreasonably protracted the proceedings, the Judge shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

IV. APPLICATION/PETITION UNDER SPECIAL ACTS

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

The practice directions in regard to original suits should mutatis mutandis apply in respect of such applications/petitions.

V. CRIMINAL TRIALS AND CRIMINAL APPEALS TO SUBORDINATE COURTS

(a) Criminal trials.—

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

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

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

(b) Criminal appeals.—

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

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

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

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

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

VII. NOTE

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

CIVIL PROCEDURE ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION RULES, 2006

In exercise of the rule-making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908)

and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Jharkhand is hereby issuing the following Rules :—

PART I

ALTERNATIVE DISPUTE RESOLUTION RULES

1. Title.—These rules in Part I shall be called the Civil Procedure Alternative Disputes Resolution Rules, 2006.

2. Procedure for directing parties to opt for alternative modes of settlement.—(a) The Court shall after recording admissions and denials at the first hearing of the suit under Rule 1, Order X and where it appears to the Court that there exist elements of settlement, which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89 and parties shall submit to the Court their responses within thirty days of the first hearing.

(b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1-A of Order X in the manner stated hereunder :

Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit.

3. Persons authorised to take decision for the Union of India, State Governments and others.—(1) For the purpose of Rule 2, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group of persons who are authorised to take a final decision as to the mode of alternative dispute resolution in which it proposes to opt in the event of direction by the Court under Section 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate Courts in this behalf as soon as such nomination is received from such Government or authorities.

(2) Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause (1) shall, if it is a plaintiff, file along with the plaint or if it is a defendant, file along with or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorised to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of alternative dispute resolution.

4. Court to give guidance to parties while giving direction to opt.—(a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely :

(i) that it will be to the advantage of the parties, so far as time and expense, are concerned, to opt for one or other of these modes of settlement (referred to in Section 89) rather than seek a trial on the dispute arising in the suit;

(ii) that, where there is no relationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of Section 89;

(iii) that, where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clause (b) or (d) of sub-section (1) of Section 89;

Explanation.—Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

(iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in

the interests of the parties to seek reference of the matter to the Lok Adalat or to judicial settlement as envisaged in clause (c) of sub-section (1) of Section 89;

(v) the difference between the different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement is as explained below :

Settlement by 'arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996.

Settlement by 'conciliation' means the process by which a conciliator, who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) insofar as they relate to conciliation, and in particular, in exercise of his powers under Sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

Settlement by 'mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties' own responsibility for making decisions which affect them.

Settlement in the Lok Adalat means settlement by the Lok Adalat as contemplated by the Legal Services Authorities Act, 1987.

Judicial settlement means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

5. Procedure for reference by the Court to the different modes of settlement.—(a) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within thirty days of the direction of the Court under clause (b) of Rule 2 and the Court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act.

(b) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat or where one of the parties applies for reference to the Lok Adalat, the procedure envisaged under the Legal Services Authorities Act, 1987 and in particular by Section 20 of that Act, shall apply.

(c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under clause (b) of Rule 2 and then the Court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to the Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act.

(d) Where none of the parties are willing to agree to opt or agree to refer the dispute to arbitration or the Lok Adalat, or to judicial settlement within thirty days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

(e)(i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty

days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act.

(ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application, refer the matter to mediation and then the Mediation Rules, 2003 in Part II shall apply.

(f) Where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within thirty days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of thirty days issue notice to the other parties to respond to the application, and

(i) In case all the parties agree for conciliation, the Court shall refer the matter to conciliation and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.

(ii) In case all the parties agree for mediation, the Court shall refer the matter to mediation in accordance with the Civil Procedure Mediation Rules, 2003 in Part II shall apply.

(iii) In case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure Mediation Rules, 2003, shall apply.

(g)(i) Where none of the parties apply for reference either to arbitration, or the Lok Adalat, or judicial settlement, or for conciliation or mediation, within thirty days of the direction under clause (b) of Rule 2, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

(ii) After hearing the parties or their representatives on the day so fixed the Court shall, if there exist elements of a settlement which may be acceptable to the parties and there is a relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall apply and in case the dispute is referred to mediation, the provisions of the Civil Procedure Mediation Rules, 2003, shall apply.

(h)(i) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for anyone of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

(ii) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

6. Referral to the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation.— (1) Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court with a

direction to the parties to appear before the Court on a specific date.

(2) Upon the reference of the matter back to the Court under sub- rule (1) or under sub-section (5) of Section 20 of the Legal Services Authorities Act, 1987, the Court shall proceed with the suit in accordance with law.

7. Training in alternative methods of resolution of disputes, and preparation of manual.—(a) The High Court shall take steps to have training courses conducted in places where the High Court and the District Courts or Courts of equal status are located, by requesting bodies recognized by the High Court or the Universities imparting legal education or retired faculty members or other persons who, according to the High Court are well versed in the techniques of alternative methods of resolution of disputes, to conduct training courses for lawyers and judicial officers.

(b)(i) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, other members of the Bar specially qualified in the techniques of alternative dispute resolution, for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, or authority or person in the case of judicial settlement or conciliators or mediators.

(ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which anyone of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of the above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

(c) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.

(d) Persons who have experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanelment for the purposes of conciliation or mediation.

8. Applicability to other proceedings.—The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act, 1984 (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act (66 of 1984).

PART II

CIVIL PROCEDURE MEDIATION RULES

1. Title.—These Rules in Part II shall be called the Civil Procedure Mediation Rules, 2003.

2. Appointment of mediator.—(a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

(b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

(c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be from the panel of mediators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

3. Panel of mediators.—(a) The High Court shall, for the purpose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its notice board, within thirty days of the coming into force of these Rules, with a copy to the Bar Association attached to the

original side of the High Court.

(b)(i) The Courts of the Principal District and Sessions Judge in each district or the Courts of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective notice boards.

(ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the Courts referred to in sub-clause (i) and to the Bar Associations attached to each of the Courts.

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel of names shall contain a detailed annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule 3.—The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely :

(a)(i) Retired Judges of the Supreme Court of India;

(ii) Retired Judges of the High Court;

(iii) Retired District and Sessions Judges or Retired Judges of the City Civil Court or Courts of equivalent status :

(b) Legal practitioners with at least fifteen years' standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status.

(c) Experts or other professionals with at least fifteen years' standing; or retired senior bureaucrats or retired senior executives.

(d) Institutions which are themselves experts in mediation and have been recognised as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

5. Disqualifications of persons.—The following persons shall be deemed to be disqualified for being empanelled as mediators :

(i) any person who has been adjudged as insolvent or is declared of unsound mind, or

(ii) any person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending; or

(iii) any person who has been convicted by a Criminal Court for any offence involving moral turpitude,

(iv) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment,

(v) any person who is interested or connected with the subject- matter of dispute or is related to anyone of the parties or to those who represent them, unless such objection is waived by all the parties in writing,

(vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings,

(vii) such other categories of persons as may be notified by the High Court.

6. Venue for conducting mediation.—The mediator shall conduct the mediation at one or other of the following places :

(i) Venue of the Lok Adalat or permanent Lok Adalat.

(ii) Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation.

(iii) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or State Bar Council, as the case may be.

(iv) Any other place as may be agreed upon by the parties subject to the approval of the Court.

7. Preference.—The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

8. Duty of mediator to disclose certain facts.—(a) When a person is approached, in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

9. Cancellation of appointment.—Upon information furnished by the mediator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

10. Removal or deletion from panel.—A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if :

(i) he resigns or withdraws his name from the panel for any reason;

(ii) he is declared insolvent or is declared of unsound mind;

(iii) he is a person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending;

(iv) he is a person who has been convicted by a Criminal Court for any offence involving moral turpitude;

(v) he is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;

(vi) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

(vii) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel;

Provided that, before removing or deleting his name, under clauses (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

11. Procedure of mediation.—(a) The parties agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(b) Where the parties do not agree on any particular to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :

(i) he shall fix, in consultation with the parties, a time- schedule, the dates and the time of each mediation session, where all parties have to be present;

(ii) he shall hold the mediation conference in accordance with the provisions of Rule 6;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;

(v) each party shall furnish to the mediator, copies of pleadings or documents or such other information

as may be required by him in connection with the issues to be resolved :

Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such officer of the Court and on such date or time as the Court may fix.

(vi) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

12. Mediator not bound by the Evidence Act, 1872 or the Code of Civil Procedure, 1908.—The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by the principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

13. Non-attendance of parties at sessions or meetings on due dates.—(a) The parties shall be present personally or may be represented by their counsel or power-of-attorney holders at the meetings or sessions notified by the mediator.

(b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs.

(c) The parties not resident in India, may be represented by their counsel or power-of-attorney holders at the sessions or meetings.

14. Administrative assistance.—In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

15. Offer of settlement by parties.—(a) Any party to the suit may, ‘without prejudice’, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(b) Any party to the suit may make a, ‘with prejudice’ offer, to the other party at any stage of the proceedings, with notice to the mediator.

16. Role of mediator.—The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasising that it is the responsibility of the parties to take decisions which affect them; he shall not impose any terms of settlement on the parties.

17. Parties alone responsible for taking decision.—The parties must understand, that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

18. Time-limit for completion of mediation.—On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

19. Parties to act in goodfaith.—While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

20. Confidentiality, disclosure and inadmissibility of information.—(1) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.

(2) When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily

divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.

(3) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.

(4) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to :

(a) views expressed by a party in the course of the mediation proceedings;

(b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;

(c) proposals made or views expressed by the mediator;

(d) admission made by a party in the course of mediation proceedings;

(e) the fact that a party had or had not indicated willingness to accept a proposal;

(5) There shall be no stenographic or audio or video recording of the mediation proceedings.

21. Privacy.—Mediation sessions and meetings are private; only the parties or their counsel or power-of-attorney holders concerned can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

22. Immunity.—No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action, nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

23. Communication between mediator and the Court.—(a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power-of-attorney.

(c) Communication between the mediator and the Court shall be limited to communication by the mediator :

(i) with the Court about the failure of the party to attend;

(ii) with the Court with the consent of the parties;

(iii) regarding his assessment that the case is not suited for settlement through mediation;

(iv) that the parties have settled the dispute or disputes.

24. Settlement agreement.—(1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power-of-attorney holders. If any counsel have represented the parties, they shall attest the signature of their respective clients.

(2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

(3) Where no agreement is arrived at between the parties, before the time-limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

25. Court to fix a date for recording settlement and passing decree.— (1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

(2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and

(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straight away in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues, which are not settled.

(ii) If the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

26. Fee of mediator and costs.—(1) At the time of referring the disputes to, mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

(2) As far as possible a consolidated sum may be fixed rather than for each session or meeting.

(3) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the two sets of parties.

(4) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.

(5) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(6) The mediator may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clauses (1), (3) and (4). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.

(7) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the parties concerned to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

(8) Where a party is entitled to legal aid under Section 12 of the Legal Services Authorities Act, 1987, the amount of fee payable to the mediator and costs shall be paid by the Legal Services Authority concerned under that Act.

27. Ethics to be followed by the mediator.—The mediator shall :

(1) follow and observe these Rules strictly and with due diligence;

(2) not carry on any activity, or conduct which could reasonably be considered as conduct unbecoming of a mediator;

(3) uphold the integrity and fairness of the mediation process;

(4) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;

(5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

(6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

(7) avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;

(9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

(10) recognise that mediation is based on the principles of self- determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;

(11) maintain the reasonable expectations of the parties as to confidentiality;

(12) refrain from promises or guarantees of results.

28. Transitory provisions.—Until a panel of arbitrators is prepared by the High Court and the District Court, the Courts referred to in Rule 3, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.